LEO STRAUSS

NATURAL RIGHT

A course offered in the autumn quarter, 1962

Department of Political Science, The University of Chicago

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With assistance from John Ellison

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Editor's Introduction

Introduction to Leo Strauss's Course on Natural Right, 1962[1]

Svetozar Minkov

This is a remarkably clear, orderly, extensive, and generous course transcript. It treats and expands on the themes of Strauss's best-selling book *Natural Right and History* (1953) and does so in a powerful, plain-spoken, fresh, and direct manner.[2] Natural Right 1962 is one of only four survey courses by Strauss that we have. The other three are, first, a course on natural right from 1954, which, in the form we have it, doesn't always have the lucidity and order of the 1962 course; second, the 1961 Basic Principles of Classical Political Philosophy; and, third, the 1965 Introduction to Political Philosophy.[3] The 1961 course is remarkable, but as it focuses on Aristotle's political science it lacks the comprehensiveness of the course here introduced. Compared to Natural Right 1962, the 1965 survey is both richer in the variety of more recent authors considered and simpler in its structure. It is, in essence, a course on positivism and historicism on the one hand, and on Aristotle on the other, and hence lacking the treatment the present course has of the pre-Socratics, Plato, Cicero, medieval political philosophy, as well as the fullness of discussion of Hobbes and Locke found here. It is the only comprehensive course on the history of political philosophy by Strauss preserved in excellent shape.

Among the more particular valuable contributions of this course one could name the following:
1) It has a thorough discussion of the nature of facts, truths, and values, including a most useful dialectical confrontation with Ernest Nagel's 1961 *Structure of Science*.
2) It contains comments by Strauss on a variety of matters that are, as far as I know, unique among the course transcripts, e.g., comments on Marsilius of Padua, Duns Scotus, Richard Hooker, Francisco Suárez, and on 1 *Kings* 21, the story of Ahab and Naboth's vineyard, a portion of which story Strauss uses as the second epigraph to *Natural Right and History*. Here Strauss tells the full story, with sharp and humorous interjections.
3) It contains more detailed reflections on modern science, mathematical physics, even on modern cosmology, than one can perhaps find anywhere else in Strauss. It is Strauss's

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[1] A version of this introduction appeared as chapter 7 in Svetozar Y. Minkov, *Leo Strauss on Science: Thoughts on the Relation between Natural Science and Political Philosophy* (Albany, NY: State University of New York Press, 2016).
[2] At one point, Strauss tells a student, "Now listen to me. Forget about my book," before proceeding to explain a point with clarity and passion.
[3] Sessions 1-9 of the Introduction to Political Philosophy (1965) transcript have been published in print by the University of Chicago Press and are also available on the Strauss Center website. See *Leo Strauss on Political Philosophy: Responding to the Challenge of Positivism and Historicism*, ed. Catherine H. Zuckert (Chicago: University of Chicago Press, 2018). Sessions 10-16, on Aristotle, are also available on the Leo Strauss Center website: https://leostrausscenter.uchicago.edu/introduction-to-political-philosophy-sessions-10-16-aristotles-politics-winter-1965/?et_fb=1&PageSpeed=off.

most extended statement on the problem caused by the "victory" of modern natural science.[4]
4) The course is unusually detailed on historicism and an unusually full confrontation with the historicist "philosophy of language" during several sessions throughout the course.
5) It contains the most extensive discussion of Thomas Aquinas by Strauss, far fuller than the one in *Natural Right and History*, which includes an especially acute comparison with Aristotle.
6) It contains a kind of commentary on Strauss's own works, especially *Natural Right and History* (including comments on his practice of including many references and implicit lines of argument in footnotes there); the essay "Political Philosophy and History" from *What is Political Philosophy?*; his essay "Relativism" (available most easily in *Rebirth of Classical Political Rationalism*); his book on Hobbes, *The Political Philosophy of Hobbes*; and indirectly, *Thoughts on Machiavelli*.

In the following comments, I focus mostly on what is unique to, or uniquely good in, this course, while omitting many essential points, not to mention countless charming and illuminating nuggets.

Compared to *Natural Right and History*, this course replaces Weber with Nagel (and to some extent with Rothman) as a representative of positivism, and adds to Heidegger, now openly named, Burckhardt, Nietzsche, and R. G. Collingwood, whose *Autobiography* is "one of the best written philosophic books" of the twentieth century, Strauss says in session 4. As in chapter 1 of *Natural Right and History*, Strauss's comments on historicism in session 1 unmistakably refer to Heidegger without naming him[5]: "The ultimate fact is an abyss of freedom. That abyss is the fundamental phenomenon and not anything explored by science"; "[t]he only non-hypothetical phenomenon at which we

[4] "The teleological view of the universe, of which the teleological view of man forms a part, would seem to have been destroyed by modern natural science. From the point of view of Aristotle—and who could dare to claim to be a better judge in this matter than Aristotle?—the issue between the mechanical and the teleological conception of the universe is decided by the manner in which the problem of the heavens, the heavenly bodies, and their motion is solved [Aristotle, *Physics*196a25ff, 199a35]. Now in this respect, which from Aristotle's own point of view was the decisive one, the issue seems to have been decided in favor of the nonteleological conception of the universe. Two opposite conclusions could be drawn from this momentous decision. According to one, the nonteleological conception of the universe must be followed up by a nonteleological conception of human life. But this 'naturalistic' solution is exposed to grave difficulties: it seems to be impossible to give an adequate account of human ends by conceiving of them merely as posited by desires or impulses. Therefore, the alternative solution has prevailed. This means that people were forced to accept a fundamental, typically modern dualism of a nonteleological natural science and a teleological science of man. This is the position which the modern followers of Thomas Aquinas, among others, are forced to take, a position which presupposes a break with the comprehensive view of Aristotle as well as that of Thomas Aquinas himself. The fundamental dilemma, in whose grip we are, is caused by the victory of modern natural science. An adequate solution to the problem of natural right cannot be found before this basic problem has been solved" (*Natural Right and History*, 7-8; see also 78).
[5] Heidegger is named in session 4. See pp. 64, 66.

arrive eventually is the stark facticity of the abyss of freedom"—"the thesis by which existentialism has theoretically destroyed positivism." In terms of the proportion of its parts, three-fourths of the course, the first twelve of sixteen sessions, are devoted either to the contemporary status of philosophy or to premodern thought, and only one-fourth to major prehistoricist modern thinkers, whereas those thinkers take up about half of *Natural Right and History*. This feature does not appear to be the result of the vagaries of teaching a course, since the structure of the course is more or less the same as that of Strauss's 1968 "On Natural Law" article.[6]

The course begins with the observation that "the belief that the fundamental project which guided the West constitutes a progress beyond all earlier possibilities." Strauss gives "only one very innocent example, Zen Buddhism," to demonstrate this change of belief (session 1). And in a later session, Strauss repeats this example: "Why not Zen Buddhism? Without investigation, indeed why not?" (session 3). More precisely, however, the course is devoted to considering the possibility of science, including the possibility of establishing rationally principles of what is right and wrong, especially with a view to exploring the character of healthy human soul and of a good human life.

To that end, Strauss begins in the first two sessions with a masterpiece of a dialectical engagement with Ernest Nagel. Strauss meticulously considers Nagel's book,[7] insisting that Nagel's fundamental weaknesses, if there are any, be identified on the basis of Nagel's own concerns and considerations. As an example of this fair-minded yet trenchant spirit, in session 2, when Strauss questions Nagel's argument on behalf of the cognitive superiority of modern science, a student conjectures that Strauss would dispose Nagel's view on the basis of Strauss's argument, and Strauss interjects: "Of *his* argument, no, of his argument. What is the pragmatic superiority [of modern science]?"[8]

Strauss calls attention to the fact that in discussing Nagel he is confronting the most up-to-date and respectable representative of positivism or analytic philosophy, of what stands for a most authoritative and scientific treatment of the weightiest subjects. (It would be a good exercise to think who the equivalent of Nagel would be today. Steven Pinker? Richard Dawkins? What would Strauss have thought, for example, of the recent debate between Steven Pinker and Leon Wieseltier on the relationship between science and the humanities?[9]) Strauss stresses that "positivism is indeed based on the old Western scientific tradition going back to Plato," and even that "somehow . . . positivism reminds one of Plato," though only in "rare moments." Positivism is, at any rate, an "absolutely decayed Platonism" (session 1). Because of this decay or confusion, Strauss needs to explain "more simply" than Nagel himself does what Nagel's fundamental concern is. Nagel "takes too many things for granted." Nagel starts from the fact that "man cannot live without seeking for causes." Strauss provides a concrete example of this need: "I

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[6] In Leo Strauss, *Studies in Platonic Political Philosophy* (Chicago: University of Chicago Press, 1983), chap. 6.
[7] Ernest Nagel, *The Structure of Science: Problems in the Logic of Scientific Explanation* (1961).
[8] On Strauss and Nagel, see also Hilail Gildin's Introduction to *Introduction to Political Philosophy: Ten Essays by Leo Strauss* (Detroit: Wayne State University Press, 1989), xiv-xvii.
[9] In the *New Republic*, August-September 2013.

believe if you look at yourself in your daily life, you don't have to be a scientist in any sense, but very frequently you are compelled to seek for a cause. For example, you have less money on your banking account than you hoped. Why? That is a cause. And even other, perhaps graver, things" (session 1). This sensible, if not yet developed, foundation gives way, however, in Nagel to doubts concerning the very foundations of science, including the principles of causality and of noncontradiction. Nagel then proceeds to try to disregard these doubts and to assert the superiority of modern science nonetheless.

This assessment by Strauss becomes especially clear during a very helpful exchange with a wonderful pushy student in session 2, in which Strauss discusses again Nagel's stance toward what Nagel sees as the logical arbitrariness of principle of causality. (On a few occasions, intelligent students put up a fight on behalf of Nagel, and Strauss responds with grace and lucidity.) Because of the inadequate treatment of these doubts on the part of positivism regarding the very foundations of science, Strauss says that "history [or historicism] is superior in dignity to science [understood as positivism]." A little later in the course, Strauss reports a personal experience of reading Heidegger's *Being and Time*: "I remember in his first book there occurs this sentence, and this set me aback: that the science of an age is dependent on the *Weltanschauung* of that age goes without saying. Fifty years before, no one would have said that" (session 4). On the other hand, here Strauss again agrees with something in positivism: "[T]here is a need for an ultimate unity of science. So this dualism of science can be accepted only as provisionally indispensable. But this comprehensive science is today only a pious wish, and therefore one cannot say more than it is to be desired" (session 2).

Before turning to historicism in the second half of session 2, Strauss devotes some time to a debate concerning Strauss's own thought between Joseph Cropsey, a student of Strauss, and Stanley Rothman.[10] Of special interest is the argument in which Rothman disputes Strauss's apparent defense of natural right, calling attention to its dependence of an allegedly debunked classical cosmology. In addition, Rothman complains about a "shift" in Strauss's position regarding the connection between natural right and cosmology. Strauss playfully responds, first, that this is a trivial biographical fact and, second, that he had granted, in *Natural Right and History*, the victory of modern natural science and its refutation of classical cosmology only because he does not like to haggle or "even *appear* to haggle."

Yet Strauss's conciliatory approach has a firm limit. In session 3, when Strauss comes back to Rothman, he makes comments which in their self-described "impatience" shed light on Strauss's self-understanding and indicate his relentlessness.

"I have dedicated some decades to this kind of subjects, and my first impression and my second impression, final impression is that Rothman believes he can dispose of my work without having given any indication whatsoever that he has invested a comparable

[10] Stanley Rothman, "The Revival of Classical Political Philosophy: A Critique," *American Political Science Review* (*APSR*) 56 (1962): 341-352; Joseph Cropsey, "The Revival of Classical Political Philosophy: A Reply to Rothman," *APSR* 56 (1962): 353-59; Stanley Rothman, "Rejoinder to Cropsey," *APSR* 56 (1962): 682-85.

amount of reflection and study. This is a wrong kind of egalitarianism, that everyone is as competent to judge as everybody else. That's not so. One must do something to become competent" (session 3).

Moreover, "[f]undamentally he [Rothman] repeats only the things which almost everyone in social science says day after day, opinions which I myself, incidentally, once had." Strauss continues: "The view which I take now may be wrong, but I do not talk nonsense and I do not glut the market with books and articles. Therefore, I would assume from the point of view of fairness, one should consider what I say, not merely repeat the commonplaces with which I am familiar" (session 3).

It is in accord with this toughness that Strauss deepens his consideration of Rothman's comment about cosmology. Strauss suggests that the real issue is whether there are essential differences among (kinds of) beings and suggests that even if Aristotle's cosmology is to be rejected, Aristotle's understanding of human affairs may be largely preserved (or still true) if there are essential differences between human and non-human things. Yet the issue of cosmology is more complex than Rothman had recognized. According to Strauss, "*all* cosmology, Aristotelian, or modern, or what have you, must start from the world as given, from the world in which the sun rises in the east and sets in the west and the earth is resting." Thought "must ascend from the world as given to its causes." And the superiority of Aristotle's "cosmology" consists in the fact that it "takes this starting point, the world as given, more seriously than all other cosmologies; "for this reason Aristotelian cosmology, regardless of whether it is tenable in its details, has a kind of theoretical superiority" (session 2). This statement has a certain parallelism to a statement in session 4:

"When we speak in this vague way—say, 'all kinds of things'—that is much more philosophic than to speak of objects or entities. Because when you say 'all kinds of things' you do not *claim* to have analyzed them; you leave it in the primary vagueness that can be an incentive to thinking. But if you use such technical terms like objects and entities you shut out the very effort of thinking because you have already such a technical term" (session 4).

More precisely and rigorously, however, this superiority of Aristotle's starting point is articulated at the beginning of session 5:

"The indubitable is that without the acceptance of which every human act, and in particular philosophy and science, do not make sense at all. This is the premise that a human being born from human beings, brought up by them, living with them on the earth where there are also stones, plants, brutes and so on, under heaven. This is the starting point of all philosophy or science in particular, regardless of whether it accepts or rejects natural right. From this situation all primary questions arise. That is to say, all questions which do not yet presuppose answers found by philosophy or science" (session 5).

Yet this recourse to common sense as a starting point is precisely what is questioned by historicisim. Perhaps that's why, already in session 2 and even while still discussing

positivism, Strauss begins his consideration of historicism, stating that it is "a form which philosophy, non-skeptical philosophy, takes on." In this initial discussion, and in fact through much of the course, Strauss stresses the importance of the issue of "language and thought." He even seems at first to adopt the perspective that either the ancient Greek language is the absolute language or historicism is correct—which would seem to hand "victory" to historicism. And Strauss grants a great deal to the historicist insight in emphasizing ("I contend") that there is no word for "world," "nature," or "being," in Hebrew. But then during the question and answer period to that session, Strauss reverts to what he calls "the old solution." Thought and language are not so tightly bound. The concepts are different from the words. He then makes this striking statement: "I would grant this, that only a man who is almost as gifted as a writer or poet as Plato could produce in any other language a decent translation of any Platonic work. But as far the non-poetic qualities are concerned—ya, the non-poetic qualities, say, the philosophic thought—I believe a perfect translation is possible" (session 3). (Strauss makes a similar point at the end of the course: Alfarabi did not know Greek, yet grasped the core of Plato's thought.[11]) And at the end of the fourth session, Strauss asserts: "There can only be one reason. There are, there can be an infinite variety of good and bad *uses* of reason; that goes without saying. But there can be only one reason. But there are necessarily *n* languages. There is not *the* language." Or more commonsensically put, to learn what "anger" is in Chinese, one can "gradually find out if the Chinese gets angry and we see certain signs by which we are in the habit of recognizing anger, and you find out what the word for that is" (session 4).[12]

In the third and fourth sessions, however, Strauss continue to remind the students of the strength and evidence for historicism. Perhaps his treatment of historicism is best captured by this twofold description: in its "serious forms, like that of Collingwood surely—[it] is a very helpful remedy of thoughtlessness, and we should welcome *every* remedy against thoughtlessness. But if it absolutizes itself, as it does as historicism, then it becomes again an instrument of thoughtlessness, and then one must part company with it" (session 4). To sharpen the students' understanding of the problem not fully faced by positivism, Strauss reduces the problem to this alternative: "We may leave it at that, say, omnipotent creator versus no omnipotent creator, but there are, of course, many other varieties." Of course, "if it were possible to understand all natural phenomena in terms of mathematical functions, you would have gotten rid of causality and everything would be fine." But this is not possible and hence, at least on modern premises, "Science is based on the arbitrary choice of one worldview among many" (session 3). Strauss also connects this problem with David Hume: the problem of causality is a "long story [which] has something to do with a man called David Hume who, in the eighteenth century, wrote what he regarded a demonstration that the principle of causality is not a rational principle

[11] Strauss observes that "[i]n the decisive points, the people who had access to Aristotle, for example only in Latin or Arabic understood Aristotle better as a rule than the modern people who have the wonderful dictionaries and commentaries of modern scholars and what have you" (session 16).
[12] Session 4 is perhaps one of the deepest sessions of the course.

as everyone had assumed before him, at least disregarding some skeptics.[13] This is not the last we hear of this issue. For example, at the beginning of session 6, in response to a student's questions, Strauss returns to the problem of science and causality, and this is also clearly the issue in Strauss's discussion in session 14 of Hobbes's and Descartes's grounding of science.

Having outlined the theoretical issues awareness of which gives support to historicism, Strauss steps back and provides a history of the proximate intellectual genesis of historicism. He begins with a distinction familiar from *Natural Right and History* between theoretical historicism and radical historicism. "Theoretical historicism seems to exempt itself arbitrarily from the general historicity of all other human thought. Science, values, ideas are essentially historical, but the historical understanding of them is not essentially historical. It is above history. And radical historicism does away with it and subjects the historical knowledge itself to historicity" (session 4). The example Strauss here gives of a theoretical historicism is Jacob Burckhardt, for whom "philosophy is the contemplation of historicity" and for whom "[m]an reaches his height only through dedication to a controversial cause, through struggle" (session 3). In addition to this new formal ethics, Burckhardt somehow still believes that the universal historian can look down on history detachedly.

Burckhardt, in the drama Strauss presents here, was influenced and taught by someone younger but more gifted than him, namely Nietzsche: "Now it is one of Nietzsche's early writings called "Of the Advantages and Disadvantages of History," in the book *Meditations Out of Season*, which I have to consider and which marks the conscious transition from theoretical historicism to radical historicism." Strauss says that Nietzsche "accepts science, especially Darwin, and history as a matter of course. Natural and historical evolution are *the* fundamental fact. This is *the* truth." But Nietzsche's "peculiar assertion" is that the truths of science "dissolve everything of any value." On the other hand, "the fabrication of myths is incompatible with intellectual probity, with honesty": "Therefore Nietzsche is compelled to question the truth of the alleged truths which are deadly. Now how can he do that? His whole lifework was devoted to this" (session 3).

Having thus indicated how "positivism turns into historicism," Strauss, at the beginning of session 4 gives a Heideggerian formulation of the problem: "the traditional understanding of science, which is no longer prevalent, but underlying somehow, is based on a specific understanding of *being* according to which being means to be *present*, to be ready at hand" (session 4). Strauss then cites "such as notions as eternal matter, eternal laws of nature" as reflecting this understanding of being. But while science tells us that "there is a certain atom of some sort at the beginning," "that is a finite process leading from an atom to us, and to an end state." There is "nothing eternal or sempiternal." Man is not eternal, the question man raises are not eternal, and of course no principles of right are eternal.

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[13] See also Leo Strauss, letter to Jacob Klein, January 8, 1949, in *Gesammelte Schriften*, *Band 3*, hrsg. Heinrich und Wiebke Meier (Stuttgart: J. B. Metzler), 598: "the unsolved Humean problem."

Referring to his own essay "Political Philosophy and History,"[14] Strauss then pushes back against this radical historicism." He begins simply: "You have to dig long enough until you find modern equivalents to the city. These equivalents will not be identical, and then you have to show the difference between that equivalent and the city." Recurring again to the problem of "language and thought," Strauss then continues:

"'Lion' means something different in Arabic, in Greek, in Chinese, in English. But is this true? Is there not a core meaning, which is the same for everyone? And what is true of the lion is also true of the earth, for example. The earth, heaven. The earth may be deified, but it is still the earth, which is deified. The core meaning remains the same. What is true of lion, earth, heaven, and so on is true of course also and above all of man, is a core meaning which is not affected. But this question, What is man? is the core question of philosophy, and from this point of view one can very well say that there are problems coeval with man as man" (session 4).

Yet not long thereafter, Strauss again opens up fundamental problems concerning the very basis of logic, ultimately raising, though without pursuing here, the "very complicated question" "whether there are not things regarding which it is impossible to avoid contradiction."

In discussing the genesis of historicism, Strauss reports the most striking suggestion that it is Schelling who first makes the distinction between nature and history and, what is more, does so by adapting Descartes's distinction between the "thinking thing" and the "extended thing." In this scheme the thinking thing (*res cogitans*) or soul becomes "History" as a "dimension of reality." However, in sessions 6 and 7 Strauss follows the less striking but more sensible thought that history is a modification of what was called convention (*nomos*) as distinguished from nature; even here, however, one still finds a trace of the "wild" Schellingian suggestion, insofar as the conventionalists, the philosophers who drew the nature/convention distinction most sharply and rejected convention most loudly, identified the soul with the body or reduced the soul to body. And at the very end of the course, these kinds of reflections come up again, and Schelling's view returns in a way. Strauss calls attention to Descartes's simplification of soul to consciousness whereas "soul," in, say, Plato's *Republic* book 1 is seen as both a source of motion and of consciousness and as having "depth" or "unconscious" elements. To that extent, late modern thought, the crisis of traditional modern natural right and modern natural science, allowed for the restoration of depth to the notion of soul and this restoration corresponded to a greater emphasis on the importance of history.

After these four introductory sessions, Strauss turns in session 5 to the ancient philosophers, above all Heraclitus, in considering whose thought Strauss pronounces the question: "What is a god?" Before interpreting key fragments of Heraclitus, however, he states the connection between the problem of natural right and philosophy. The distinction between nature and convention or *nomos* made by the early philosophers is "much more important, much more fundamental, than the distinction between nature and

[14] In Leo Strauss, *What is Political Philosophy? and other Studies* (Chicago: University of Chicago Press, 1959), 56-77.

art." That is because "the *nomos* determines not only action, what men do, but also thoughts as well . . . because there must be given a reason why you should abstain from this or do that." The *nomos*, in other words, "necessarily contains thoughts regarding the gods, regarding the whole . . . in its way comprises the whole." Like art, *nomos* presupposes nature, but it "also conceals nature because it asserts that these and these are the true principles, as they were later on called." The crucial question then becomes: "Does what is by nature good for man include something like right, right in the sense of justice? does it include something like noble or base or is everything called right and noble merely conventional?" (session 5).

Strauss continues to discuss philosophic conventionalism, the view that "all high and sacred right" has the status of regulations about left-hand side versus right-hand side of the road driving. While Strauss does not deny that a conventionalist such as Antiphon is a philosopher, and he even says in session 7 that the conventionalist thesis that the soul is something bodily (*Laws* 10) has a kinship with a key thesis of the *Republic* (that the body as body is noncommunizable while right, or at least one necessary element of right, is something necessarily communal or public), Strauss seems to favor the Platonic approach represented by Socratic discovery of "noetic (intellectual) heterogeneity" which discovery "underlies Plato and Aristotle." This discovery enables Plato to articulate a notion of natural right, thought that notion is limited is in several ways, which limitation, according to Strauss, explains why Plato speaks of natural right so rarely. In this context, Strauss asks, "Is the Platonic meaning facilitated as it were because of the Greek understanding of gods, but eventually not dependent on it?" (session 6). What follows is a masterful and wonderfully accessible account of certain aspects of Plato's *Republic*, which I won't summarize here, in part because Strauss has written extensively on the *Republic* in *City and Man*,[15] and there are two full course transcripts on the *Republic*, and in part because it is so succinct that no summary can do it justice.

Strauss's own summary is that "the Platonic doctrine of natural right is identical in the first place with his doctrine of the best *polis*, the best regime, as the absolute rule of wise over unwise people, as this which would be intrinsically the justest thing although not obtainable in practice" (session 6). But Plato's notion of natural right is above all "his doctrine of the virtues and the natural order of the virtues." The political implications of that doctrine are that "wisdom is indispensable." But Strauss shows that so is consent. "Wisdom as wisdom is directed toward what is by nature right, the unwise as unwise will not understand what is by nature right" (session 6). In session 7, Strauss indicates that the early modern philosophers also started from this fundamental tension between wisdom and consent, but they emphasized the consent angle rather than that of wisdom. (One possible reason for this emphasis is that Hobbes, Locke, and Rousseau, perhaps in the face of claims of godly duties they did not wish to accept, were "anxious to emphasize rights over duties" [session 16].)

In a later session, in response to a question Strauss provides what might call the "metaphysical" foundation for the dilution of wisdom by consent in Platonic natural right or why evils would never cease. He says, "to use the Aristotelian language which is not

[15] Leo Strauss, *The City and Man* (Chicago: University of Chicago Press, 1964), chapter 2.

entirely inappropriate in the case of Plato: matter's recalcitrance to form." Strauss refers to the *Laws* where "in the tenth book there is a momentary suggestion that there are two world souls, an ordering and a disordering. You can almost say a god and a devil" (session 8). In other words, due to a kind of "cosmological disorder," evil belongs to the world . . . and therefore . . . one can never have what is truly and fully natural right" (session 8). In a somewhat parallel passage in session 11, Strauss gives a brilliant, succinct, and commonsensical account both of natural inequality and of the meaning of Socrates's *daimonion*. The intellect as such is driven to the ideas, but once it is embodied, inequalities arise. Some people are too fearful, other too prone to drinking, and so on. This is the "meaning of this famous demonic thing which Socrates possessed, that he was the man most fitted by nature for philosophizing. His body was perfectly obedient. He could drink more than anyone else and still remain sober, for example" (session 11).

Just as session 6 contains a marvelous account of *The Republic*, session 7 contains a beautiful, and funny, account of Plato's *Gorgias.* Session 8 in turn contains a masterful comparison of the two fundamental dialogues. One crucial difference between the two dialogues, Strauss says, is that the just man in the *Gorgias* is artless and unphilosophic whereas the cause of justice in the *Republic* is salvaged only by identifying the just man with the philosopher.

Sessions 8 and 9 are a kind of consideration of Aristotelian natural right, above all a discussion of *Ethics* 5.7 and the mutability of natural right expressed there, but Strauss continues to make remarkably revealing statements about Plato.

"Aristotle's natural right is apparently in no need of being diluted . . . if there is a fair exchange in the sale or in the barter, what is there to be diluted? The question of whether the one who gets the umbrella would be better off if he would get wet is irrelevant. For Plato strictly understood it is relevant, because everyone should get what is good for him . . . By cutting off this consideration from the consideration of justice proper, Aristotle arrives at a right which is not essentially in need of being diluted. Aristotle is much closer to what we ordinarily understand by justice" (session 9).

In other words, "Just as Plato says there is no moral virtue in the Aristotelian sense, because there cannot be genuine virtue of anyone except philosophers, for the same reason Aristotle admits a genuine natural right, say, commutative justice, whereas Plato questions that" (session 9). The "root of the problem" is that there is no moral virtue as such for Plato whereas the felicitous formulation from Perry Mason—"clean like a hound's tooth and sharp like a steel trap"—applies well to Aristotle's teaching of moral and intellectual virtue. In a certain agreement with the "religious view," Plato would say that moral virtue is a "leaky vessel" or that the "cleanliness of that tooth" is not genuine without philosophy (session 11).

Strauss then turns in session 10 to the Stoics and their teaching of natural law, above all as found in Cicero. Strauss wishes to identify the specific reason why there is "natural law" in the Stoics but no in Plato and Aristotle, a puzzle especially great given that the Stoics were materialists. Strauss does not accept the historical explanation Stoics adopted

universal natural law because of the universalization of the world through Alexander the Great's empire, in part because that empire was not genuinely global. Instead, Strauss sees "only one answer and this is the Stoic teaching regarding Providence." Natural law in the Stoics is "fundamentally a providential order" (session 10). Aside from this doctrinal aspect, however, the Stoics fundamentally agreed with Plato that there is no moral virtue separable from wisdom. Put another way, Cicero understands natural right in terms of health of soul and health of soul above all in terms of the human capacity to think well about the world and one's affairs. Perhaps of interest to the effort to understand the early modern philosophers such as Machiavelli, Strauss denies in a subsequent session, in response to the question whether "the statesman-philosopher is superior to the philosopher simply,"[16] that the question whether the philosopher should rule is a "primary" one: the "guiding thing" in the statesman-philosopher is still philosophy. "I don't deny the importance of your question," Strauss says, "but it is not the primary question," which is "the order of rank between theoretical understanding and practical understanding and there Cicero agrees with Plato and Aristotle" (session 11).

Also in session 10, Strauss engages in a thought-provoking comparison between Cicero and Hobbes, which prepares the discussion of Hobbes in sessions 13 and 14. The comparison revolves around the questions of who is more aware of the facts of human life and especially human malice; of whether living in accord with malice or love is better for the human soul; and of whether the desire for self-preservation—say, in a situation with two starving men on a raft—exerts a kind of geometric necessity on the human soul or not: Isn't it possible that one of the men could say, "All right, you are younger, or so; let me perish?" (session 10).

Session 11 contains a very helpful summary of Cicero's *Republic*, masterfully showing the similarity of its analysis of the essential limitations of justice to that of Plato's *Republic*. Strauss then turns to Thomas Aquinas's teaching of natural law which was partly prepared by the Stoics. The two main topics or questions Strauss considers are, first, the substantive differences between Aristotle and Aquinas on natural right (the root of the difference perhaps being stated in session 12: "The philosopher does not play this role [in figuring out that natural right is strictly applicable only to the philosopher and has to be diluted in its application to society] in Thomas Aquinas because ultimately for him the crucial distinction is that between orthodox Christians and people who are not orthodox Christians" (session 12). Second, the question whether "natural law as Thomas Aquinas understands it [is] truly a dictate of natural reason or is . . . perhaps based, without his knowing it, without his admitting it, on revelation" (session 11). Strauss's treatment is delicate here as shown by a comment such as this: "This is a statement [by Thomas Aquinas] in itself in absolute agreement with Aristotle, but I think it also shows the difference between Thomas and Aristotle" (session 11).

Session 12 contains perhaps a surprisingly appreciative discussion of Francisco Suárez in relation to a "very old problem" raised in Plato's *Euthyphro*: "Do the gods love the just because it is intrinsically just, or is the just just because the gods established it as just?" (session 12). Suárez fights on the one hand against this divine legal positivism (or

[16] Session 11.

voluntarism), and on the other hand against natural law understood as pure reason—which Strauss says is Locke's position. In his manner, Suárez, Strauss says, clarifies situation of relation of natural law to divine punishment better than does Aquinas. In this session, Strauss also discusses Marsilius of Padua: "according to Marsilius wars are by nature necessary, wholly independently of human ill will, in order to prevent overpopulation" (session 12). If this is so, Strauss continues, "if this is the primary reason for war, not the bad will of governors or the injustice of rulers, then the distinction between just and unjust wars loses much of its force." Thus Strauss returns once more to what is perhaps the question of the course as a whole: the way one needs to understand the mutability of natural right in light of the relation between intellect and body, or wisdom and physical strength. Strauss uses Suárez and Marsilius to explicate in another way and once more the reasoning underlying Aristotle's remark about the mutability of natural right:

"Incest between brother and sister is forbidden insofar as it is damaging to human nature, and therefore contradicting natural virtuousness according to right reason. But this reason ceases and this relation begins to be matrimony in agreement with nature, and hence virtuous in such situations in which there is no other way of procreation of the human race except through such a relation, because if this marriage of brother and sister is undertaken alone for the sake of the conservation of the human race, [which is] not possible in the circumstance in any other way, then it becomes a legitimate and moral action" (session 12).

Sessions 13 and 14 then adumbrate Hobbes's teaching on natural law. Hobbes's restriction of natural inclination to self-preservation alone—excising the top two found in the traditional teaching, sociality and knowledge—aim in a way to provide undiluted wise guidance to social life, guidance rooted in rational fear, skepticism about the content of happiness, and dogmatism about its indispensable means. These sessions also contain an explication of the nerve of Hobbes's "anthropology": human beings alone can think "causally," can contemplate the previously unimagined effects of their power. Session 13 also features the following. First, a sharp and clear discussion of Machiavelli, including a version of what one finds at the end of *Thoughts on Machiavelli*: the absence of a "second conversion" in Machiavelli, a conversion to a concern with truth alone, following the first conversion from merely selfish interest to the selfish interest of the glory-seeking founder that becomes identified with the interest of the common good; second, a statement on the importance of Descartes's universal doubt; and, third, a helpful account of the origin of a "metaphysically neutral" natural science.

This last account is a very valuable part of the course. According to Strauss, in modern times the "concepts themselves, not only words, are conceived as constructs" while "according to Aristotle a concept is not a construct" but "emerges in the human mind under certain conditions *naturally*." (This natural emergence is even true of medieval and ancient nominalists for whom concepts are not consciously made. As Strauss says, Epicurean *prolepseis* or anticipations grow naturally.) The case of Descartes is relevant here too: "on the basis of sense data which that ego has—red patches, shrill sounds maybe—on the basis of sense data, this extramundane ego constructs the whole within

which man is an accident" (session 13). This is "the overall view of the universe which became the view of modern science. Modern mathematical physics was fundamentally based on such a notion" (session 13). Similarly, in session 15, having elaborated Locke's notion of productive labor, Strauss finds "a parallel in Locke's doctrine of knowledge": "the notions we need for any understanding are called by Locke abstract ideas or abstract ideas of a certain kind." Abstract ideas like man, dog, motion, are "the creatures of the understanding." In this way, "[u]nderstanding and science stand in the same relation to the given, the sense data, in which human labor stands to its raw materials" (session 15).

Both sessions 14 and 15 begin somewhat autobiographically. In 14 Strauss says that he had not appreciated Hobbes's modification of the state of nature when he wrote *The Political Philosophy of Hobbes*, while at the beginning of 15 he says that when he was "very young" he had trouble distinguishing Plato's "idealism" from Hobbes's. Strauss also recurs here to the fundamental theme of the course—wisdom vs. consent, related to the theme of the mutability of natural right—and suggests that the more deeply one thinks about the political problem, the more one boils the issue down to these two principles. Within this framework, "for Hobbes *consent* is the fundamental phenomenon, not wisdom. And "the basis of the consent principle is, was from the very beginning, bodily power, whereas the basis of the wisdom principle is the power of the mind" (session 14).

The fundamental difficulty of Hobbes's teaching, which Hobbes "did not solve in any way," concerns "the fact that he both admits and denies that it is possible to distinguish between the king and tyrant." This is the "clear limit" of Hobbes's teaching and this is what Locke and Rousseau try to "take care of" (session 14). This is perhaps clearer here than what we find in *Natural Right and History*, page 198.

Thus, Strauss tells us in session 15, the "great power of Locke consists in the fact that on the very Hobbean basis he refutes Hobbes's conclusions." After summarizing lucidly and succinctly the movement of the course at the beginning of session 16, Strauss indicates the proximity of Rousseau to the classics *from a theoretical point of view*. Rousseau "knew quite well" that the general will is insufficient; its solution is "too simple and too beautiful to be true." One can easily find a majority "and perhaps even unanimity for a rather stupid law." What is needed is the *transformation* of natural man into the citizen. Strauss says that key to this transformation is found in a "very cryptic" chapter of *The Social Contract*, "On the Legislator," 2.7. And the crucial point is that "the legislator brings about the transformation of natural man into the citizen by claiming *divine* origin for his code, and therefore with a view to the *supernatural* sanctions." In other words, "man must be *denatured*, as Rousseau calls it, in order to become a citizen" (session 16). Strauss has returned to the disproportion between "natural right" pure and simple (wisdom) and its diluted application (consent).

Whatever may have been Rousseau's theoretical point or insight, Kant, partly as a result of Rousseau's influence, defends "laws of reason, laws of freedom, but no longer laws of nature": "Human nature cannot be the basis of man's moral orientation" (session 16). Having quickly indicated the role of Burke in the final stages of this liberation from the guidance of nature, and not finding the time to get to Bentham, Strauss concludes with a

brief discussion. This discussion includes, as mentioned above, reflections on the replacement of the soul by consciousness and the belated attempt in late modernity to recover the soul in its depth—though without the corresponding notion of "health of soul" found in, say, Plato or Cicero. After answering another question about the problem of "language and thought," Strauss concludes this exhilarating and always masterfully guided voyage.

The Leo Strauss Transcript Project

Leo Strauss is well known as a thinker and writer, but he also had tremendous impact as a teacher. In the transcripts of his courses one can see Strauss comment on texts, including many he wrote little or nothing about, and respond generously to student questions and objections. The transcripts, amounting to more than twice the volume of Strauss's published work, will add immensely to the material available to scholars and students of Strauss's work.

In the early 1950s mimeographed typescripts of student notes of Strauss's courses were distributed among his students. In winter 1954, the first recording, of his course on Natural Right, was transcribed and distributed to students. Professor Herbert J. Storing obtained a grant from the Relm Foundation to support the taping and transcription, which resumed on a regular basis in the winter of 1956 with Strauss's course "Historicism and Modern Relativism." Of the 39 courses Strauss taught at the University of Chicago from 1958 until his departure in 1968, 34 were recorded and transcribed. After he retired from Chicago, recording of his courses continued at Claremont Men's College in the spring of 1968 and the fall and spring of 1969 (although the tapes for his last two courses there have not been located), and at St. John's College for the four years until his death in October 1973.

The surviving original audio recordings vary widely in quality and completeness, and after they had been transcribed, the audiotapes were sometimes reused, leaving the audio record very incomplete. Beginning in the late 1990s, Stephen Gregory, then the administrator of the University's John M. Olin Center for Inquiry into the Theory and Practice of Democracy funded by the John M. Olin Foundation, initiated the digital remastering of the surviving tapes by Craig Harding of September Media to ensure their preservation, improve their audibility, and make possible their eventual publication. This remastering received financial support from the Olin Center and from the Division of Preservation and Access of the National Endowment for the Humanities. The remastered audiofiles are available at the Strauss Center website: https://leostrausscenter.uchicago.edu/courses.

Strauss permitted the taping and transcribing to go forward, but he did not check the transcripts or otherwise participate in the project. Accordingly, Strauss's close associate and colleague Joseph Cropsey originally put the copyright in his own name, though he assigned copyright to the Estate of Leo Strauss in 2008. Beginning in 1958 a headnote was placed at the beginning of each transcript, which read: "This transcription is a written record of essentially oral material, much of which developed spontaneously in the classroom and none of which was prepared with publication in mind. The transcription is made available to a limited number of interested persons, with the understanding that no use will be made of it that is inconsistent with the private and partly informal origin of the material. Recipients are emphatically requested not to seek to increase the circulation of the transcription. This transcription has not been checked, seen, or passed on by the lecturer." In 2008, Strauss's heir, his daughter Jenny Strauss, asked Nathan Tarcov to succeed Joseph Cropsey as Strauss's literary executor. They agreed that because of the widespread circulation of the old, often inaccurate and incomplete transcripts and the continuing interest in Strauss's thought and teaching, it would be a service to interested scholars and students to proceed with publication of the remastered audiofiles and transcripts. They were

encouraged by the fact that Strauss himself signed a contract with Bantam Books to publish four of the transcripts although in the end none were published.

The University's Leo Strauss Center, established in 2008, launched a project, presided over by its director Nathan Tarcov, and managed by Stephen Gregory, to correct the old transcripts on the basis of the remastered audiofiles as they became available, transcribe those audiofiles not previously transcribed, and annotate and edit for readability all the transcripts including those for which no audiofiles survived. This project was supported by grants from the Winiarski Family Foundation, Mr. Richard S. Shiffrin and Mrs. Barbara Z. Schiffrin, Earhart Foundation, and the Hertog Foundation, and contributions from numerous other donors. The Strauss Center was ably assisted in its fundraising efforts by Nina Botting-Herbst and Patrick McCusker, staff in the Office of the Dean of the Division of the Social Sciences at the University.

Senior scholars familiar with both Strauss's work and the texts he taught were commissioned as editors, with preliminary work done in most cases by student editorial assistants. The goal in editing the transcripts has been to preserve Strauss's original words as much as possible while making the transcripts easier to read. Strauss's impact (and indeed his charm) as a teacher is revealed in the sometimes informal character of his remarks. Readers should make allowance for the oral character of the transcripts. There are careless phrases, slips of the tongue, repetitions, and possible mistranscriptions. However enlightening the transcripts are, they cannot be regarded as the equivalent of works that Strauss himself wrote for publication.

Nathan Tarcov — Editor-in-Chief
Gayle McKeen — Managing Editor

August 2014

Editorial Headnote

This course was taught in a lecture format, though there are several extended sessions of questions from students. When the texts were read aloud in class, usually by Strauss, this transcript records the words as they appear in the relevant editions. Original spelling has been retained. Citations are included for all passages.

Audio files are available for sessions 1 through 4, and the second half of session 13 through session 16. The transcript of these sessions is based upon remastered audio files. The transcript of the remaining sessions (5 through 12 and the first half of session 13) are based on the original transcript, made by persons unknown to us, which can be consulted in the Leo Strauss archive in Special Collections at the University of Chicago Library. Ellipses that appear in the original transcript have been retained. When the transcriber indicated "inaudible" or left a blank space, we have rendered as ellipses within square brackets: [. . .]

Footnotes have been provided to identify persons, texts, and events to which Strauss refers.

This transcript was edited by Svetozar Minkov, with assistance from John Ellison.

The Transcript

Session 1: October 1, 1962

Leo Strauss: Now let us begin. This course is entitled "Natural Right." The purpose of the course is to articulate the fundamental problem of political philosophy. The title "Natural Right" indicates that problem as a problem. The form "natural right" is somewhat unfamiliar. The forms most familiar today would be "values" or "ideologies," and a slightly older formula would be "ideals." But up to about 1800, natural law or natural right was the most favored formulation. It suffices to remind you of the beginning of the Declaration of Independence. Now, why do we prefer the older expression, the older version, although it seems to have become obsolete? In the first place, the historical importance. Natural law and natural right were key terms for millennia, so to speak, whereas "ideal" is only a few hundred years old and "values" hardly one century.

But surely one can say that is not a very good reason, because the Ptolemaic system lasted much longer than any later cosmological system and people in cosmology or astronomy today do not deal chiefly with the Ptolemaic system. We must therefore consider for one moment the inner evidence. Why is the term "natural right" still intelligible to us in spite of the fact that there is such a powerful opposition to it? I will read to you only a single statement to indicate the evidence of this concept. At the end of his *Discourse on the Origin of Inequality*, Rousseau says: "However one may define the law of nature, it is manifestly against the law of nature that a child should give orders to an old man, that an imbecile should guide a wise man, or that a handful of men should gorge itself with superfluities whereas a famished multitude lacks the necessities."[i] Rousseau thought it is patently reasonable what he says here, and I believe we all can still understand it. This is an indication, a provisional indication of the evidence of the notion of natural right or natural law. But I will take a somewhat broader view of the situation. The reason why we turn to that somewhat old-fashioned concept is that the modern equivalents, like ideal, value, ideology, lose their evidence with the progressive crisis of the modern world. In what does that crisis consist? We can say that the West, the noncommunist West, has lost a certainty which gave it guidance for centuries. The West has lost in our time the certainty of progress. The belief that the fundamental project which guided the West constitutes a progress beyond all earlier possibilities; to mention only one very innocent example: Zen Buddhism.

Now what is that fundamental project? It was that science exists for the sake of human power, that science should enable man to relieve his estate, as Bacon called it; or that science should enable man to become the owner and master of nature, as Descartes called it. In other words, science is meant to issue in scientifically-based technology, and that this scientifically-based technology will bring about a state of universal affluence, a state in which it would be possible to establish universal equality, universal justice, universal peace. In brief, a world society, embracing all men, where it would be relatively uninteresting whether this world society would have politically the form of a world federation or of a unitary world state. Now this prospect, this project, had very great evidence for a long time. The famous wartime statements during the First and during the Second World War were based on this view. But the modern hope was shaken less by fascism, because fascism could be interpreted, and was interpreted as a matter of fact, as

[i] Strauss's translation.

simply an attempt on the part of the vested interests of monopoly capitalism to defend[1] [themselves] against this threat. The modern hope was shaken not by fascism but by communism, because here a movement appeared which had apparently the same goal: the universal world society in which there would be universal peace, freedom, and equality. And for some time people in the West thought they could regard the communists as somewhat impatient or wayward brethren at the left, but who had fundamentally their heart in the right spot, and it was only a slight difference of patience or impatience.

Now this hope has been destroyed, in the first place and very obviously under Stalin, but also under the successor of Stalin, and therefore the whole question must be reconsidered. This is our predicament. I mention the very obvious fact which you all know from the daily papers: the prospect of thermonuclear war; the extreme inhumanity which we find in many places of the world today, at least equaling, perhaps surpassing, those inhumanities which originally called forth the modern project; no prospect of an understanding between East and West, as is indicated by the very term "coexistence," "coexistence" meaning of course something different from living together. A man does not coexist with his wife and children, he lives with them. The term indicates a problematic character.

So the belief in this universal society and the progress toward it has lost its evidence. Differently stated, the universal society and the progress toward it is no longer regarded as a rational goal. And this is not the view of some extremists, but it is the view dominating our social science, as I can prove in the most simple way, because in our present-day social science such things as this vision of the world society are called ideologies or values. And it is a basic premise of present-day social science that no value can be rational, no value can be demonstrated to be the true value by rational argument. [2]They use the term "ideology": an ideology is an attempt to justify a value system. But what does it mean to justify a value system? It means to establish, find a foundation for a value system in something which is not a value system, and that other thing can only be facts. But to derive values from facts is according to the prevalent view impossible. Therefore every ideology is by definition a wrong theory, which is perfectly compatible with its being socially useful as a myth, but[3] theoretically it must be wrong. Every ideology is theoretically untenable. [4]Given this premise, it goes without saying that this notion of the future of mankind and the course for which it is desired cannot be rational goals. There can be rationality regarding the means, but not regarding the goal.

The basis of all that is the distinction between facts and values, of which I have to say more later; for the time being, only this much. The man who established this distinction between facts and values in the social sciences was Max Weber, whose name many of you will have heard in college[5] already or in graduate school. Now Max Weber was the first student of social things who had undergone the influence of the great philosopher Nietzsche, and Nietzsche had attacked this modern project more emphatically, more radically in a way, than anyone else. And Nietzsche called the man who would be a member of this universal society "the last man": last, no hope. No hope, but merely an end. [6]Weber, confronted with this criticism, impressed by that criticism, reached the conclusion which was acceptable to him, it seems: that either this modern project ending in the last man or any other project of this kind cannot be rationally established. So the criticism of the modern project belongs to the genesis of the fact-value distinction as now generally accepted.

Now let me come back to the point from which I started: natural right. Today the possibility of a natural right is generally rejected. There is one form of the rejection which I shall not discuss here but which I must mention, and that is so-called legal positivism: the view that the only right or law which is possible is positive law, the law established by human legislators. Now legal positivism is open to a very simple difficulty, because we are compelled to distinguish between just and unjust laws. There is no way out. For example, if there would suddenly be a law that all men whose family names begin with an "A" do not have to pay taxes, and the rider, "no one may change his family name henceforth," then everyone would say that it is an absolutely idiotic law because there is obviously no connection between the name and ability to pay taxes and so on; whereas if someone would say that war veterans, severely mutilated, handicapped, should be tax-free, that would at least have some sense. So we must make a distinction between just and unjust laws, and I think this is also fairly generally admitted. But people would then say, "What is the criterion for distinguishing between just and unjust laws?" and then the ordinary answer given is: The view of justice which is predominant in or accepted by the community. This of course leads to other difficulties because this sense of the community is changing, perhaps even constantly changing, and it is perhaps also the result of conflicting views of justice belonging to different strata of society and so on. It also leads of course to the conclusion that a cannibalistic society has naturally also a sense of justice, and is it not necessary to raise the question whether cannibalism as such is a just institution or not? So this leads, further on leads to the question: Must we not eventually arrive at something which is intrinsically right, right not by the dictate of the human legislator or by the power of society at large? And this is what is meant by natural right, a right which is intrinsically right, by nature right.

Today this view, as I have said more than once, is rejected, and the rejection takes place on two different grounds. In order to clarify matters—not to simplify, but to clarify—we shall try to trace this rejection to two different schools of thoughts, which together determine the large majority of scholars in the West today. Now these two schools have been called [by], and I shall call [them] with, two names to be explained later: positivism on the one hand, and historicism on the other. And this dualism between positivism and historicism has its roots ultimately in the millennial, secular fight between materialism on the one hand, and spiritualism on the other. Positivism is a kind of heir to materialism, and historicism a kind of heir to spiritualism. To make this clear, what I mean by clarification: many people[7] present a view which is a kind of mixture of positivism and historicism. That is always so in such cases. But clarity we reach only if we take the clear cases, and then everyone is free to figure out the particular position, the particular intermediate positions.

Now let me first define these positions very generally, because it is absolutely necessary to begin that course with a critical survey of the most powerful schools today; otherwise, the course might be taken to be of a merely antiquarian character. It will be apparently antiquarian all right, but only apparently, and therefore I must begin with this criticism. Now positivism says we can possess knowledge only of the "is" or [of] the facts, not of the "ought" or [of] the values. But justice, right, is meant to be a value; hence there cannot be knowledge of natural right. Simple syllogism. Now to explain this for one point, positivism of course does not deny that we as social scientists can study values; for example, the values of democracy, or the values of Indochina, or what have you, or the values of the Middle Ages. But as facts you cannot pass a judgment on the

value of these values. Now historicism, the clear case of historicism is this: the distinction between facts and values is not tenable. The distinction between facts and values is not tenable. But the categorial system—I will first state it—is in each case identical with the value system.

Now all human thought—that is also admitted by positivism—rests ultimately on certain fundamental hypotheses or premises, which we may call, as many people call [8]them, the categorial systems, systems of categories. And from the positivistic point of view, these categorial systems, say, underlying modern science [9][are] absolutely neutral to any values, absolutely neutral. Historicism says the categorial system is in itself a value system and therefore the distinction between facts and values is not tenable. But these systems are historically variable. There is not *the* true system, categorial or value system, so the highest principles of thought regarding theoretical or practical matters are historical, belonging to a specific historical situation, and have no validity beyond that. In its clearest form, what I call historicism is generally known today known by the name of existentialism.

I must speak in the first place of positivism because it is much more powerful in present-day American social science than historicism. Being a very broad movement, embracing the large majority of American social scientists, it has of course a great variety of levels. That is inevitable: the broader a movement, the greater the variety of levels. We can say at the top we would find Max Weber, and on the bottom we would find the most common garden variety of social science. But in spite of all these differences of level, there is agreement regarding two key points. First, regarding the distinction between facts and values, and secondly, there is another point. Even if you start at the top, say, Max Weber's position, you are invariably led, by something which one may call a dialectics, to the most common vulgar garden variety of this kind of thing.

I cannot possibly engage in a detailed discussion of positivism. I have written something about that, and [10]I'm compelled to refer you to my publication.[11][ii] In my study on natural right and history the second chapter deals with Max Weber.[iii] My critique was attacked by Arnold Brecht in his book *Political Theory*. I try to reply to his criticism in an article called "Relativism,"[iv] which appeared in a book called *Relativism and the Study of Man*, edited by Schoeck and Wiggins, and in some other places which you can easily find. I cannot repeat this argument and perhaps even the most important points I made there. In the recent issue of the *American Political Science Review* there was a discussion between Rothman, who attacked my position, and Mr. Cropsey, whom some of you know. And I saw just now that this is continued in today's issue of *American Political Science Review*,[v] which just came out. So I would like to complete what I have to say about positivism today, but this does not depend entirely on me.

[ii] *Political Theory* (Princeton: Princeton University Press, 1959).
[iii] *Natural Right and History* (Chicago: University of Chicago Press, 1953).
[iv] *Relativism and the Study of Man*, ed. Helmut Schoeck and James Wilhelm Wiggins (Princeton, NJ: Van Nostrand, 1961); also in *The Rebirth of Classical Political Rationalism: An Introduction to the Thought of Leo Strauss*, selected and introduced by Thomas Pangle (Chicago: University of Chicago Press, 1989).
[v] Stanley Rothman, "The Revival of Classical Political Philosophy: A Critique," *American Political Science Review* [*APSR*] 56 (1962): 341-52; Joseph Cropsey, "A Reply to Rothman," *APSR* 56 (1962): 353-59; Stanley Rothman, "A Rejoinder to Cropsey," *APSR* 56 (1962): 682-86.

First, a simple piece of historical information. Positivism is a movement which was originated by the French philosopher, sociologist Auguste Comte, one hundred thirty years ago. Present-day positivism is very different from Comte's positivism, but there are nevertheless very important elements in common. The key teaching of Comte is the doctrine of the three stages of the development of the human mind and of society. These three stages he called theological, metaphysical, and positive. The theological or mythological—that meant the same for him—this was characteristic, for example, of the Middle Ages; the metaphysical [of the] seventeenth and eighteenth centuries, culminating in the French Revolution; and the positive is that which he expected to come in in the nineteenth century. Now the positive age is characterized by the preponderance of scientific thinking, i.e., the rejection of theological and metaphysical thinking. Scientific knowledge is the highest and final form of knowledge; in fact, the only true form of knowledge. [12][Comte's] formula was that science, in contradistinction to metaphysics and theology, does not strictly speaking explain, i.e., explain *why* things happen as they happen, but describes *how* they happen, a formula which has been repeated many times since.

Now the key point in Comte, which has been abandoned by positivism later on, but the crucial point is this: that each stage of the development of the human intellect corresponds to a state of society. So[13] you have[14] some ecclesiastical rule in the theological stage; a rule of intellectual anarchy in the metaphysical stage, leading therefore to the culmination and explosion of the French Revolution, [namely], its characteristic abstract concepts—not persons as in the theological age, but abstract concepts, leading to abstractness in politics, i.e., to revolution, and the French Revolution is of course the example. Now in the positive age society will have to be ruled by scientists or a technocracy. The whole notion of the rule of society by experts, scientific or technological experts, goes back to this view.[15] So the anarchy which according to Comte was created by the abstract principles of the French Revolution will be disposed of if the men of science will come in[to] control. For Comte the question of facts-values did not yet exist because it was perfectly clear to him what the value is, namely, a stable order in society or, to use a somewhat more general term,[16] morality consists in living for the other fellow. Altruism: that is morality. And of course this thing is active at all times, but the way in which it is active depends on the stage of the intellect. So altruism under theological premises will look very differently from altruism in a scientific society. For example, indiscriminate almsgiving would belong to the theological society, but welfare scientifically controlled, that would belong to the scientific age. It is not very difficult to understand that.

But positivism as we have it today is radically different from Comte's precisely because present-day positivism is based on the distinction between facts and values, which implies [that] no knowledge of right and wrong, of good and bad, is possible. This distinction emerged only in the 1890s and began to be powerful only after the First World War, really, and then it conquered indeed the world since, say, roughly 1920; and today there are quite a few people who do not even imagine that one could doubt of the evidence of that distinction. There is a corollary of the fact-value distinction, which is rather generally denied by positivists—for example, by Brecht, but by others too—and yet it seems to me absolutely evident; and that is what one could call the equality of all values, meaning this: that if it is impossible to distinguish between good and bad or right and wrong, then all notions of good, all the infinitely various notions of good or right, have theoretically the same status. Theoretically they are equal. If I were a positivist, I would gladly admit this as a logical consequence. But for some reason, which I have still not

understood, they say "no." They deny the equality of all values. No one has ever succeeded in making it clear, except that some people don't like it, apparently, but other positivists do. To take a very simple example that I have heard from some of my older colleagues here in Chicago, who are now retired,[17] in the conflict between liberal democracy and fascism, or Hitler in particular—well, they don't like Hitler and what he stands for, but theoretically that is as defensible as the case of liberal democracy, and so on. As I say, that may be the reason, come to think of it, because some people just don't like to admit it in plain words that they stand for the equality of all values. But it is, to repeat, a necessary consequence.[18]

To begin now with my critical remarks, I take as my basis this time a very well known textbook of positivism, Ernest Nagel, *The Structure of Science: Problems in the Logic of Scientific Explanation* (1961).[vi] So I think that is up to date. Now Nagel takes here issue with certain propositions which I have made and which I have to read to you in Nagel's quotation. The point here is this: the fact-value distinction implies that the social scientist as social scientist may not make any value judgments, and I asserted against that that this is absolutely impossible. It is possible to make some merely factual judgments. For example, Mr. Miller weighs one hundred seventy pounds. That is a factual judgment, I take it, and there are other factual judgments possible, [for example], there are so and so many "juvenile delinquents in a city," because juvenile delinquents must not be taken as a value judgment, [19]but you can count [them] at any rate. Now I say, granting that it is possible to make a large number of factual, merely factual, judgments, you cannot nail down social science on the proposition that it is not permitted to make any value judgment, because that leads to sheer nonsense.

And I read now what I said and what Nagel quotes:

"Would one not laugh out of court a man who claimed to have written a sociology of art but who actually had written a sociology of trash? The sociologist of religion must distinguish between phenomena which have a religious character and phenomena which are a-religious [for example, buying a shirt—LS]. To be able to do this, he must understand what religion is. . . . Such understanding enables and forces him to distinguish between genuine and spurious religion, between higher and lower religions; those religions are higher in which the specifically religious motivations are effective to a higher degree. . . . The sociologist of religion cannot help noting the difference between those who try [well, he didn't quote it correctly—LS] to win the favor of a god or gods by change of heart[vii] [and those who try to do it, gain it, by some bribery—LS]. Can he see this difference without seeing at the same time the difference between a mercenary and nonmercenary attitude? [Value implied in the terms mercenary and non-mercenary—LS] . . . The prohibition against value-judgments in social science would lead to the consequence that we are permitted to give a strictly factual description of the overt acts that can be observed in concentration camps, and perhaps an equally factual analysis of the motivations of the actors concerned: we would not be permitted to speak of cruelty. Every reader of such a description who is not completely stupid [I mean, who can see through these technical terms—LS] would, of course, see that the actions described are cruel. The factual description would in truth be a bitter satire [because the simple expression "cruelty" is avoided—LS]. What claimed to be a straightforward report would be an unusually circumlocutory report. . . . Can one say anything

[vi] *The Stucture of Science* (New York: Harcourt, Brace, and World, 1961).
[vii] In original: "those who try to gain it by a change of heart."

relevant on public opinion polls . . . without realizing the fact that many answers to the questionnaires are given by unintelligent, uninformed, deceitful, and irrational people, and that not a few questions are formulated by people of the same caliber—can one say anything relevant about public opinion polls without committing one value-judgment after another?"[viii]

Or to take a very simple case, everyone who has any political understanding is, sooner or later, driven to admit that it is necessary to make a distinction between politicians and statesmen, as a factual distinction; and yet it is obviously a value distinction. Or take any little example. For example, when people, even opponents of President Roosevelt spoke of his radio voice, which was said—you are too young for that, you know—then that was a value judgment.[ix] I mean, it is a very arbitrary distinction.

Now what does Nagel say to this point? In brief,[20] he admits[21] that it's necessary, but he says there is a distinction. We must make a distinction between two kinds of value judgments: characterizing value judgments and appraising value judgments. For example, a biologist even is compelled to say, "This animal suffers from anemia." Anemia is understood to be a defective state, i.e., value judgment, but by this I do not mean at all, if I say this as a biologist, that it is undesirable for a given animal to continue being anemic. In other words, I can state it without it becoming in any way relevant for my action. Only in the latter case would it be a value judgment proper. I cannot read everything, but let me read you one point: "The sociologist who claims that a certain attitude manifested by a given religious group is mercenary, just as the physiologist who claims that a certain individual is anemic, is making what is primarily a characterizing value judgment. In making these judgments neither the sociologist nor the physiologist is necessarily committing himself to any values other than the values of scientific probity, and in this respect, therefore, there appears to be no difference between social and biological or, for that matter, physical, inquiry."[x]

Now what does this mean? In the first place—now, he admits that biologists too must make value judgments. Well, take a simple thing: this animal is sick, or this is blind. It limps, whatever.[22] We characterize it as defective in one way or the other. So the fact that biologists must make value judgments shows that value judgments are compatible with science. Well, I have nothing against that. It shows not that the social scientist may not make value judgments, but that the fact-value distinction is not even tenable, say, in biology. Now what does this distinction which Nagel proposes between characterizing and appraising value judgments mean? It merely means that in most cases we are indifferent to the fact that something is defective in one way or the other. Say I find this rat is blind and I do not care. I may even find[23] that regarding human beings. Or I may be prevented from caring. For example, if someone would

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[viii] *Natural Right and History*, 50-53.

[ix] President Franklin D. Roosevelt delivered regular radio addresses from the time he was governor of New York (1929-33) through his presidency. In these addresses, referred to as "Fireside chats," Roosevelt spoke informally and used simple words and phrases. The addresses were hugely popular with the American people.

[x] *Structure of Science*, 490-91. Ellipses in original.

make the value judgment that Nehru is a hypocrite because of his behavior in the Goa question,[xi] this is wholly irrelevant[24] to the question whether you can do anything about it. In most cases our value judgments, if we use it that way, do not affect our actions. So this is a very uninteresting distinction. It is irrelevant.

I read to you another passage. "It would be absurd to deny that in characterizing various actions as mercenary, cruel, or deceitful, sociologists are frequently, although perhaps not always wittingly, asserting appraising as well as characterizing value judgments." In other words, they are not merely saying "this is a swindler," but also "I don't like swindlers," because, after all, it is possible that someone might say a swindler is indeed surely a defective man in some respects, but I can get along with them fine.

"Terms like 'mercenary,' 'cruel,' or 'deceitful' as commonly used have a widely recognized pejorative overtone. [I should say so—LS] Accordingly, anyone who employs such terms to characterize human behavior can normally be assumed to be stating his disapprobation of that behavior . . . and not simply characterizing it.

"However, although many (but certainly not all) ostensibly characterizing statements asserted by social scientists undoubtedly express commitments to various (not always compatible) values, a number of 'purely descriptive' terms as used by natural scientists in certain contexts sometimes also have an unmistakably appraising value connotation."

It seems to me that he grants everything here, what I have asserted. But let us see how he continues.

"Thus, the claim that a social scientist is making appraising value judgments when he characterizes respondents to questionnaires as uninformed, deceitful, or irrational can be matched by the equally sound claim that the physicist is also making such judgments when he describes a particular chronometer as inaccurate, a pump as inefficient, or a supporting platform as unstable. Like the social scientist in this example, the physicist is characterizing certain objects in his field of research; but, also like the social scientist, he is in addition expressing his disapproval of the characteristics he is ascribing to those objects."[xii]

Now you see again one could immediately say this: what follows from that is only that—if we take the facts as he states them—that the natural consequence is that the fact-value distinction is not even tenable in physics. I would not draw this inference from this example for the very simple reason [that] the physicist spoken of here does not appraise the primary objects of physics, say, atoms or elements of atoms. He is speaking here of *artifacts*, things like a pump, like a platform, things which were designed for a purpose; and you cannot say that of an atom, but of a platform or of a pump you must say it. Being designed for a purpose, they are meant, they call as it were, for being judged in terms of whether they fulfill or do not fulfill their

[xi] From the 1940s, Goa sought independence from Portugal. The prime minister of India, an adherent of the nonviolent principles espoused by Gandhi and an advocate of disarmament, used overwhelming force to secure Goan independence in late 1961.
[xii] *Structure of Science*, 494.

purpose. A broken chair is *objectively* a defective chair because a chair is produced for sitting on it, and if you cannot sit on it for a variety of reasons, one leg missing or something else, then it is a deficient chair. This is perfectly compatible with the fact that some people, some whimsical people, may love broken chairs in their homes just to look at [laughter], especially when they are very old or perhaps have been made by a famous chairmaker, or some other limiting and qualifying consideration which is of course always possible. Or one may simple cherish a broken chair because one has already had it for some generations in one's family.

"Nevertheless [I'm sorry I have to read this to you—LS]—and this is the main burden of the present discussion—there are no good reasons for thinking that it is inherently impossible to *distinguish* between the characterizing and the appraising judgments implicit in many statements, whether the statements are asserted by students of human affairs or by natural scientists. To be sure, it is not always easy to make the distinction formally explicit in the social sciences—in part because much of the language employed in them is very vague [for example, honors—LS], in part because appraising judgments that may be implicit in a statement tend to be overlooked by us when they are judgments to which we are actually committed though without being aware of our commitments. Nor is it always useful or convenient to perform this task. For many statements implicitly containing both characterizing and appraising evaluations are sometimes sufficiently clear without being reformulated in the manner required by the task—"

Notice this difference: the terms are very vague but they are sufficiently clear. Do they become clearer by making the terms very exact, or do the terms cease to be clear, do the statements cease to be clear when the terms are made exact? Everyone who has ever read a social science analysis of a phenomenon which he knew from daily life will understand what I mean.

"and the reformulations would frequently be too unwieldy for effective communications between members of a large and unequally prepared group of students. But these are essentially practical rather than theoretical problems. The difficulties they raise provide no compelling reasons for the claim that an ethically neutral social science is inherently impossible."[xiii]

To which I would say: It is possible, to some extent, to distinguish between facts and values, but it is very difficult. The terms employed by social science are "very vague"and yet the statements embodying them are "sufficiently clear." I can only repeat that. Let me see: there is one more passage. Yes, this refers to a related subject. Permit me to read it to you without indicating the connection for the time being.

He speaks of a school in social science called the sociology of knowledge, which asserts that there is no possibility of a theoretical view in any form of science which is not bound to some social group and hence to some specific value system. In other words, sociology of knowledge is a kind of historicism, to state it simply:

"even extreme exponents of the sociology of knowledge admit that most conclusions asserted in mathematics and natural science are neutral to differences in social perspective of those asserting them [in other words, a mathematician who is the son of a shoemaker and a mathematician who is the son of a President of the United States: this is wholly irrelevant in mathematics and in

[xiii] *Structure of Science*, 494-95.

physics—LS] so that the genesis of these propositions, social genesis, is irrelevant to their validity. Why cannot propositions about human affairs exhibit a similar neutrality [and now comes the remarkable thing—LS] at least in some cases? [Now if it can do it in some cases, and maybe these are wholly uninteresting cases, it would be finished. This is an extremely crucial but lame admission—LS] Sociologists of knowledge do not appear to doubt that the truth of the statement that two horses can in general pull a heavier load than can either horse alone, is logically independent of the social status of the individual who happens to affirm the statement. But they have not made clear just what are the inescapable considerations that allegedly make such independence inherently impossible for the analogous statement about human behavior, that two laborers can in general dig a ditch of given dimensions more quickly than can either laborer working alone."[xiv]

Again, it amounts to this: [25]the attempt to show that there are—it is possible in social science to have statements which are value-free like this statement about the two laborers; no one ever denied that. But the question with which we are concerned is whether social science as the intelligent study of human society is possible on the basis of a universal prohibition against value judgments; and this point is never properly made, it seems to me.

Now what is the ground of this difficulty?[26] We have seen that in a way Nagel gave the show away when he tried to refute the contention which some others and I have made by saying even physicists make value judgments—which, it seems to me, leads to the conclusion that, to repeat, [27]the distinction between facts and value judgments is not tenable even in physics. In fact, he did not prove it because the examples he gave from physics, as distinguished from biology, dealt with artifacts, not with physical objects proper such as atoms and similar things. Now why is then the distinction between facts and values in principle impossible in the social sciences? And one can say this: The example of artifacts is helpful. Social institutions are human contrivances made by man for some purpose. They call by their being for judgment in terms of the purpose which they serve. More generally stated—and this goes beyond that—if you take a broken chair, that's a fact. "Is" belongs to the sphere of the "is"; as *broken* it points to a healthy chair, to an entire, whole chair. Is this not universally true, that the "is" points to the "ought," that the facts point to the values, if we use this, in my opinion, inadequate terminology? Let us take the broadest and most general example. Anyone who talks about facts and values is compelled to tell us what a fact is and what a value is. I mean this would be absolutely disgraceful for a scientific man who bases his whole scientific orientation on the distinction between facts and values if he could not tell us what a fact on the one hand, and a value on the other is. These questions—what is a fact? what is a value?—are according to this orientation factual questions. We must be able to answer them.

Now what is a value? It's very hard to find an answer to this simple question, although they talk so much about values. A value, if you infer a definition from usage in this kind of literature,[28] on the one hand[29] may mean anything desired; for example, this cigarette, if I desire it, this cigarette here. Literally anything may be a value because there is absolutely nothing, not [even] the most despicable and nauseating things, which are not sometimes desired perhaps by insane people. So anything can be a value in this sense. But there is also another meaning discernible where it does not mean the things valued, but the principles of evaluation. For example, someone may desire

[xiv] *Structure of Science*, 500.

an apple for the pleasure, or another may desire it for taste. Another may desire it for profit, namely, he wants to sell it. Or he may desire it as the model for a painter. Infinite. But still there[30] are a variety of principles of preference and this is also what they sometimes understand by value. So only the second sense is of any interest, it seems to me, because the first is simply vague and useless.

Now what is it, what constitutes a value in all these cases? According to one view the desire for the thing, whatever the principle may be, whether it is health or profit or whatever it is. But if a man desires something and yet disapproves of that desire, loathes that desire, despises himself for that desire regardless of whether he succeeds in suppressing the desire or not, can this desire still be said to be his value? This is still a factual question. Is this a value, or is this not a value? The two answers which are possible, it is a value or it is not a value, are equally factual because of the factual character of the question. The factual question is this: Is there or is there not an essential difference between desire and choice? I mean, desire—anything you desire even if you hate yourself for desiring it, fight your desire, still you desire it; and choice means what you truly decide in favor of. Now the first view, the view that desire is the thing which constitutes value, is characterized by blindness to that obvious difference and necessary difference between desire and choice. On factual grounds, we are compelled to say that a value is an object of choice as distinguished from mere desire. This means that the different views of the "is"—is there or is there not an essential difference between desire and choice—lead to different views of the "ought" or of the values. By this argument indeed you arrive only at formal characteristics, very general characteristics. For example, if someone has a desire, say, for drugs, according to one view this would be his values, drug addiction. But from a more perceptive view one would say: "Of course there is no value, because there is no choice; this man has not even the possibility to reflect and to resist. How can you call this a value?" The factual question regarding the existence or non-existence of a difference between desire and choice decides the question of what kind of things are and are not values: a value judgment. It is inseparable. The "is," i.e., the pertinent "is"—pertinent, for example, such phenomena as desire and choice—that "is" which is relevant to values or evaluation is not neutral regarding values.

A broader view would say this: that the pertinent "is" is not only desire and choice discussed in this abstractness but the nature of man. If you take the nature of man as a whole, you cannot have a view of the nature of man, a theoretical view of the nature of man, without having already by this fact decided in a general way as to what is good and bad. The simple evidence which the distinction between facts and values, is and ought, seems to have is this—and you could easily see this when reading Max Weber, for example. You find a factual statement: "This and this political party or religious party is stronger than the other parties, it is likely to win out; hence, it *should* win out. You know, there are people, very vulgar people, but their thought is very powerful and especially powerful in the nineteenth century in connection with the belief in progress, who really thought: If I know the future—say, the social future—then I know what I have to choose. In former times I think even very simple people would have said [that] this is utterly irrelevant[31]. The future may bring the destruction of everything I regard as valuable, and to jump on the bandwagon may be very shrewd politics but it is surely not decent choice. But given the belief in progress in the nineteenth century, given the fact that the distinction between good and bad had been replaced in fact by the distinction between progressive and reactionary, stargazing took the place of moral orientation. Confronted with this state of affairs, what Weber

meant made some sense. This kind of "is," trends of development,[32] cannot tell you anything about what you should do. Surely not. But this was not the "is" which the earlier social thinkers had in mind, which "is" was supposed to give them guidance about human life. This "is" in its complete form in older times was the notion of the nature of man, but you can take such a very narrow example as I propounded today, the distinction between desire and choice, to get some provisional understanding of that.

Now I have to take up one more point and then I will see whether we have reached some understanding. In the beginning of this book Nagel discusses the question of science in general, and this we must indeed do here even in this very provisional survey. The fact-value distinction may be the most important distinction within the social sciences at any rate, but it is, so to say, an intrascientific distinction and we have to take that whole science within which it occurs. Now science is surely a human pursuit and a distinctive human pursuit. It is common to distinguish science, for example, from art, from religion, from politics, and so on. Science is understood to be a quest for knowledge. Now it is clear that knowledge or the quest for knowledge is not limited to science, but occurs also in ordinary life. We speak of commonsense knowledge as distinct from, in contradistinction to scientific knowledge, and Nagel does the same. The question then arises: If we want to understand science, what is the relation of science to commonsense knowledge?

Now the points which Nagel makes are quite reasonable as far as it goes. He refers, for example, to the formula [that] the sciences are simply organized or classified common sense, but shows that this is not quite adequate. He says, for example, that science supplies trustworthy explanations of a general character, whereas commonsense knowledge does this less or not at all. I must say the statements of Nagel about this subject are more sober than those you hear sometimes in social science. He admits that commonsense knowledge is not simply nonsense but of course measured by the standard of scientific knowledge, decisively defective. For example, common sense rests on hasty generalizations. Where a scientist would only say, "On the basis of what we hitherto know it is probably so," common sense simply says, "A is the cause of B, etc." He also mentions the fact that common sense frequently contradicts itself. He naturally refers to the imprecision or laxity of commonsense language. He also, [and] this is perhaps a bit more important for our purposes—[xv] —while common sense knowledge is largely concerned with the impact of events upon matters of special value to men, theoretical science is in general not so provincial."[xvi] Commonsense knowledge, we may say, is anthropocentric; science tries to overcome that. "Implicit in the contrasts between modern science and common sense . . . is the important difference that derives from the deliberate policy of science to expose its cognitive claims to the repeated challenge of critically probative observational data, procured under carefully controlled conditions [which, indeed, in ordinary life we do not do—LS]."[xvii]

I draw your attention to one word which occurred here. He says "the contrast between *modern* science and common sense." We will come to that immediately. A last quotation from this context:

[xv] The tape was changed at this point. The recording resumes with Strauss reading a passage from Nagel.
[xvi] *Structure of Science*, 10.
[xvii] *Structure of Science*, 12. Ellipses indicate that Strauss omitted part of the passage.

"If the conclusions of science are the products of inquiries conducted in accordance with a definite policy for obtaining and possessing evidence, the rationale for confidence in these conclusions as warranted must be based on the merits of that policy. It must be admitted that the canons for assessing evidence which define the policy have, at best, been explicitly codified only in part, and operate in the main only as intellectual habits manifested by competent investigators in the conduct of their inquiries. But despite this fact [in other words, the lack of theoretical clarity regarding the fundamentals—LS] the historical record of what has been achieved by this policy in the way of dependable and systematically ordered knowledge leaves little room for serious doubt concerning the superiority of the policy over alternatives to it."[xviii]

Now let me try to explain that.[33] I'll try to explain it more simply than Nagel does it, because it seems to me that he takes too many things for granted. Nagel seems to start from the fact that man cannot live without seeking for causes. I believe if you look at yourself in your daily life, you don't have to be a scientist in any sense, but very frequently you are compelled to seek for a cause. For example, you have less money in your banking account than you hoped. Why? Why? There is a cause. And even other, perhaps graver things. Now this quest for the causes reaches its highest perfection in science, in modern science. This quest is based on the principle of causality: nothing happens without a cause, to use a very simple formula for that. Now[34] the simplest man who has never come across any science or something of this kind will admit this, even if he had never heard it before. He will say of course nothing happens without a cause; there must have been some reason why this horse ran away or this field did not produce the expected food, or whatever it may be. Now the key question therefore is: What is the cognitive status of the principle of causality by which the whole scientific enterprise stands and falls? Now let us address this question to Nagel. A long discussion on causality.

"What is the upshot of this discussion of the logical status of the principle of causality? Is the principle an empirical generalization [meaning you have seen in a number of times that events had causes and then you assume there will always be causes; (an) empirical generalization—LS], an a priori truth [that is hard to explain, but let us say something which is of absolute inner evident necessity—LS], a concealed definition, a convention that may be accepted or not as one pleases? [This is the question—LS]

"The view that the principle is an empirical generalization, it has been argued, is difficult to maintain. For when the principle is formulated in a fully general way . . ." [xix]

That is too technical. Well, the very simple reason why it is impossible is this: from the fact that it has happened hitherto, the mere fact that it has always happened hitherto, no conclusion is possible regarding the future unless you bring in the principle of causality in a hidden way. The principle, that is his conclusion, is a maxim.

"But if the principle is a maxim, is it a rule that may be followed or ignored at will? Is it merely an arbitrary matter what general goals are pursued by theoretical science in its development? It is undoubtedly only a contingent historical fact that the enterprise known as "science" does aim at achieving the type of explanations prescribed by the principle [i.e., the principle of causality as

[xviii] *Structure of Science*, 13.
[xix] *Structure of Science*, 323-24.

hitherto defined by him—LS] for it is logically possible that in their efforts at mastering their environments men might have aimed at something quite different. Accordingly, the goals men adopt in the pursuit of knowledge are *logically* arbitrary."[xx]

In other words, we could have followed an entirely different principle than the principle of causality as interpreted by modern science.

"Nevertheless, the actual pursuit of theoretical science in modern times is directed toward certain goals, one of which is formulated by the principle of causality. Indeed, the phrase 'theoretical science' appears to be so generally used that an enterprise not controlled by those objectives would presumably not be subsumed under this label. It is at least plausible to claim, therefore, that the acceptance of the principle of causality as a maxim of inquiry . . . is an *analytical* consequence of what is commonly meant by 'theoretical science.' In any event, one can readily grant that, when the principle assumes a special form, so that it prescribes the adoption of a particular type of that description by every theory, the principle might be abandoned in various areas of investigation. But it is difficult to understand how it would be possible for modern theoretical science to surrender the general ideal expressed by the principle without becoming thereby transformed into something incomparably different from what that enterprise actually is."[xxi]

Now what does this mean? There is no *logical* necessity to accept the principle of causality. It is logically contingent, as he says. Men may engage in an entirely different kind of inquiry or musing or what it may be about nature. That is logically as sensible as the other. The principle of causality is *historically* contingent. At a certain moment, say around 1600, some individual, probably Galileo and some other famous men, embarked on this venture. They might as well have embarked on a different venture or continued the old ventures. A historically contingent decision, that is the basis of the principle of causality. If you want to have modern theoretical science, as he puts it, you must accept it. But you don't have to want modern natural science, modern theoretical science. That's your choice.

The interesting point is this. Nagel seems to have completely forgotten what he said in his relatively clear statements in his introduction, where he showed at great length that there is an obvious superiority of scientific knowledge to commonsense knowledge, in other words, that you can explain to a cattleraiser that he would be better at cattleraising if he were to know what a modern veterinarian, or maybe a biochemist or whatnot, knows. And in all other respects the same thing. So science is manifestly, objectively, superior to common sense. And when he comes to the key question he says it is logically arbitrary. It is historically contingent.

That is not a special flaw of this particular author. Something of this kind, not exactly in this form, but something of this kind you find in this whole literature. Let me explain that. The basis of modern science is ultimately an arbitrary decision, yet a decision determining the character of the whole modern world of course, because that science has transformed the world through the technology and in various other ways, goes without saying. Therefore, we must speak of a historical decision. That is not a decision like the one of Herbert Simon's typist, you know, who

[xx] *Structure of Science*, 324. Italics in original.
[xxi] *Structure of Science*, 324. Italics in original.

decides to type what her boss tells her—I mean, if you can call that a decision.[xxii] But that is a historical decision. It has determined the fate of men—man—all over the globe. Yet, that is implied in what Nagel says, it is one historical decision among many, because when people had not yet embarked on modern science they had some other form of orientation whose primary principle, of course, was as logically contingent, as arbitrary as the principle underlying modern science. There were other historical decisions at other times and places. The conclusion: The comprehensive context within which we have to understand our science, social or natural, is not logic because we have seen the ultimate principle to which we are led by logic is the principle of causality, and the principle of causality is logically—how did he put it?—is logically arbitrary. So the context is not supplied by logic but by history, because the ultimate basis of science proves to be a historical decision. And this implies something else of greatest gravity. History cannot be scientific thus understood, because scientific means of course to have accepted one *particular* historical decision and not to be *beyond* any historical decision. History transcends the arbitrary and contingent adoption of science. History is superior in cognitive dignity to science. This is a point to which I have also referred elsewhere and which I must develop more fully next time, what I call the necessity for present-day positivism to become historicism. Or in different terms, that of the two most powerful schools in the West today, the historicism sees the difficulty and faces the difficulty which positivism never faces.

Positivism is indeed based on the old Western scientific tradition going back to Plato, and somehow—I mean, in rare moments—positivism reminds one of Plato. But positivism is of course an absolutely decayed Platonism, if one can call it Platonism in any sense, because the older view, naturally, was that science, the understanding of the whole, the universal knowledge, is the highest activity of man and is to be pursued for its own sake. No positivist today would dare to say that. The utmost he would say: I like science. Utmost. He can even no longer say, as his forbears in modern times said: Science is necessary for human well-being. How can he dare to say that? Are we better off today, simply speaking, as earlier generations were? Was there at any time a prospect that a few men could exterminate the whole human race, a thing which we owe to modern science? The simple expression of that is of course the fact that the positivist would make the distinction between facts and values, which means in plain English [that] he is unable [35]to answer the question, Why science? In the best case, he can say what science is in this more precise sense of what does science do, how does science proceed, and what is the character of scientific concepts, etc.—what they call logic, sometimes also epistemology. But the question, Science for what? or Why science? is no longer answerable and cannot be faced by this approach.

Let me state this very briefly. I'm afraid we won't be able to have a discussion today. Let me start again from the distinction of facts and values. This distinction means in effect that the most important questions cannot be answered by modern science. I think that follows immediately, because the distinction between facts and values can also be stated as the distinction between means and ends. The values are the ends and the facts are the means. It's not exactly the same, but roughly it's the same. Now but what is the use of all means in the world if you do not know the end for which you wish to use the means? So the most important questions are those

[xxii] See Herbert Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations* (1947).

regarding the ends or the values. These questions cannot be answered by modern science. This is a very tough thing. The most important questions are nonscientific questions.

Now there was some man whom I can only describe with that vulgar expression, a wiseguy, because no less vulgar expression would fit the case, who found a way out. Questions which cannot be answered by modern science, he said, are meaningless questions. Now that would be wonderful. That means, in plain English, all meaningful questions can be answered by modern science. A grosser form of question-begging has never happened, even before the invention of logic. These things are not merely academic things going on in classes on logic and so, but they have consequences. People become aware of that, that the most important questions are simply beyond science, and then this happens[36]: the effect was called, by someone who deplored it, the flight from scientific reason. Naturally, if science is only secondarily relevant, the best thing to do is to go to the relevant thing. And in particular, of course, science cannot answer the question, Why science? What is the meaning of that whole terrific enterprise? Well, formerly people said, and there are still some older gentlemen living who say: Well, the root of science is the fact that man wishes to survive and needs tools and so on and so on, and the most perfect form of toolmaking, etc. is science. But of course this kind of knowledge which men surely need in order to survive cannot possibly be identified with the science which leads to the hydrogen bomb. In a word, we are no longer[37] able to answer the question, Why science? No reason can be given why a man chooses science or why man as man chooses science. If we make a thorough analysis of science, its methods, its principles, we ultimately arrive at the fact of an inexplicable choice, as Nagel himself said it quite clearly: logically arbitrary, an inexplicable choice.

The ultimate fact is an abyss of freedom. That abyss is the fundamental phenomenon and not anything explored by science. And this abyss cannot be understood scientifically, of course, for scientific explanation is already based on the contingent choice of science. Any attempt, say by psychoanalysis, to explain that fundamental choice is begging of all questions, because by adopting psychoanalysis or anything of this kind you have already made the choice toward scientific orientation—which choice, we have heard, is a logically arbitrary choice. It is strictly hypothetical. The only non-hypothetical phenomenon at which we arrive eventually is the stark facticity of the abyss of freedom. This is very simply the thesis by which existentialism has theoretically destroyed positivism. Footnote: theoretical destruction is perfectly compatible with the practical survival in great prosperity of the theoretically destroyed. I think that is one of the elementary kind[s] of common sense knowledge which I can presuppose. I will develop this somewhat later.

So it seems to me for every thinking contemporary who is not impressed by a very great but hollow power, the issue is today the issue called historicism. But I have to develop this somewhat more fully next time.[38]

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[1] Deleted “itself.”
[2] Deleted “To.”
[3] Deleted “it cannot be,”
[4] Deleted “and now.”
[5] Deleted “, if not already.”
[6] Deleted “This criticism—“
[7] Deleted “are—.”

[8] Deleted “it.”
[9] Deleted “has is.”
[10] Deleted “—much as—well.”
[11] Deleted “I wrote.”
[12] Deleted “his.”
[13] Delete “you say.”
[14] Deleted “a kind of priest-king in the theological stage and the medieval dualism of powers in the theological stage. No, I am sorry.”
[15] Deleted “And this is what—so”
[16] Deleted “it is—“
[17] Deleted “that.”
[18] Deleted “Now—“
[19] Deleted “otherwise… it’s possible [?],”
[20] Deleted “he makes a distinction between two—“
[21] Delete “it,”
[22] Delete “They are values.”
[23] Deleted “—I mean,”
[24] Deleted “to.”
[25] Deleted “there are”
[26] Deleted “Are not social institutions—“
[27] Deleted “that.”
[28] Deleted “you see.”
[29] Deleted “a value.”
[30] Deleted “is.”
[31] Deleted “, what the future.”
[32] Deleted “and so on, they.”
[33] Deleted “Men cannot live—I mean,”
[34] Deleted “we all…”
[35] Deleted “to say.”
[36] Deleted “which has this.”
[37] Deleted “—no one is no longer.”
[38] Delete “I repeat next time will be, if everything goes well, a week from Wednesday, as far as this class is concerned. My seminar will be tomorrow [inaudible word]. Well, if there is anyone who is eager to bring up one point, one relevant—“

Session 2: October 10, 1962

Leo Strauss: Are we ready? Good. Well, I regret that I could not meet the class for the last week, and you may have forgotten whatever you may have heard last time because I understand you haven't heard much because of my poor voice. So I will repeat the main point I made last time. We have to start from the fact that natural right is generally rejected today. It is rejected on two different grounds, which I indicate by the names of the schools of thought in question: positivism and historicism. By positivism I understand the view according to which the only form of genuine knowledge is scientific knowledge, and scientific knowledge issues only in factual statements in contradistinction to value statements. The distinction between facts and values is also known as the distinction between the "is" and the "ought."[1] Historicism, on the other hand, admits that the distinction between facts and values is untenable; that the system of theoretical understanding, the categorial system, is at the same time the value system. The categorial system and the value system are a unity, and this can be called the comprehensive view, the worldview of the society in question, or with a German word, *Weltanschauung*. But there is an indefinite variety of such views and each having its own, embodying its own notion of right. There cannot be natural right as a right belonging to man as man.

I began then last time to give a sketch of my argument regarding positivism. I enumerate the most important points. Is it possible to conceive of social science as a science wholly free from value judgments? Granted that one can distinguish between facts and value judgments, can one exclude value judgments from social science without making social science altogether sterile?

Now a well-known representative of positivism, Ernest Nagel, admits now the necessity of characterizing value judgments, as he calls them, in contradistinction to appraising value judgments. For example, "this and this is defective" is a characterizing value judgment, whether applied to a chair, to institutions, to human beings, and so on. But, "something must be done about making that defective thing entire," this would be an appraising value judgment; and appraising value judgments have no place according to him in social science. Nagel tries to turn the table by saying that such characterizing value judgments are inevitable even in biology and even in physics. Yet this means that the exclusion of value judgments is impossible *even* in biology and in physics, if his argument is correct. The main point is that he admits now the necessity of value judgments in the social sciences.

But in the most general terms, one cannot maintain the fact-value distinction intelligently without raising the questions, What is a fact? and What is a value? And these questions would be, from the ordinary point of view, factual questions. But they cannot be answered, especially the question what is a value cannot be answered, without making a value judgment. For instance, mere desire is lower than choice. Or perhaps to make it somewhat clearer, I believe it is necessary, if we wish to understand the world in which we live, to make a distinction between liberal democracy and permissive egalitarianism. What does this mean? I would say that the best term to understand liberal democracy is the term conscience. Liberal democracy admits freedom of conscience. Permissive egalitarianism goes much beyond that: it admits the freedom of every

urge, unless it leads to murder, and even then perhaps this is a long question. So if you take the conscientious objector and compare him with the murderer, then you have a simple example. The conscientious objector is willing to die for his conviction, the *conscientious* decision, and therefore it is recognized. The murderer does not have a conviction. That would be an extremely rare case, if someone would murder in order to uphold the right to kill. There might be such a crazy man, but this is not the case of the ordinary murderer. So here, once you see the necessity of such a distinction, that what the murderer has in mind is something radically different from, say, what the conscientious objector has in mind, and only one of the two can be called values in the proper sense, your answer to the question of what value is constitutes a value judgment. That what prompts the conscientious objector is higher than what prompts the mere criminal.

Now the second major point I made is this: that the principle of science is the principle of causality; and a specific understanding of causality is underlying modern science. Of this specific understanding of causality, Nagel says that it is logically arbitrary, on pages 323 following; I do not have the volume here. The specific understanding of causality which makes modern science what it is is historically contingent. Men could have made another fundamental decision, and that would have led to something different from modern science, but it would not have been absurd, it would not have been impossible. Whereas in the introduction to his work Nagel asserts in fact that science, modern science, is *the* perfection of the ordinary understanding, of the commonsense understanding, he asserts in the passage referred to that modern science is not *the* perfection, but one particular way in which we can transcend common sense [that is] not superior intrinsically to any other.

I would like now to summarize this point and then to illustrate it by a more recent discussion. The basis of modern science according to this statement is then an arbitrary decision, yet a decision determining the character of a whole world,[2] whole modern world, and it is therefore a historical decision, one historical decision among many. For example, Christianity and Islam and Confucianism would be other such historical decisions. The comprehensive context within which we have to understand modern science is then not logic, because logic cannot go beyond laying bare the logically arbitrary character of the principles of this science, but history, history which sees this historical decision in its relation to other historical decisions. And it is also clear that this history, since it transcends science, cannot be scientific. It transcends the arbitrary or contingent *adoption* of science. And it is also clear that history is then superior in cognitive dignity to science, because history does not rest on any particular arbitrary decision but surveys all arbitrary historical decisions of which we know.

I conclude this argument with the following general remark. Positivism is a theoretically indefensible position. It is amazingly thoughtless. It represents an entrenched position which has become effete. Why is it so powerful nevertheless? Why do so many people, I think the large majority of social scientists in particular, cling to it? It seems to me that we have to look for it in the first place for extra-theoretical motivations: the tradition of the connection between modern science and the modern libertarian movement, this famous emancipation movement leading toward a perfectly secular and perfectly egalitarian society. And I think one can find—the bitterness and the heated character of the discussion can be traced to the fact that it is not merely an academic issue which is involved. This would, however, not be sufficient, because at least in the case of the serious positivists who are naturally a minority, it is a concern, a genuine concern,

with the dignity of reason and science. That the theory does not live up to this genuine concern is another matter, but the existence of that concern I would be the last to deny.

Now in order to illustrate this point I would like to say a few words about a recent criticism of the position which I have taken. It is in a very well-known place: in the most recent issue, the September issue, of the *American Political Science Review*.[i] [It is] by Mr. Rothman, who had attacked my position in an earlier edition, was answered by Mr. Cropsey,[ii] and now he replies to Mr. Cropsey. I think it is of some use to say a few words about his criticism. It is also interesting as a specimen of what is regarded by quite a few people today [as] legitimate criticism. "Cropsey . . . argues that in order to make my case," Rothman says, "I must refute certain of Strauss's assertions as to the implications of positivism and historicism, namely,[iii] that positivism leads logically to historicism . . . . This, of course, is neatly to shift the burden of proof. I was only required to demonstrate that Strauss had not made his case."[iv] The demonstration consisted, if I remember well, in the assertion that I had not made the case, which is not a demonstration. "[L]ater in his essay he asserts that I admit the historicist implications of positivism because I refuse to argue that science itself is 'more worthy than other pursuits.' I still reply, as, indeed I wrote in my original essay: it is not a contradiction to assert that the method of science is the only way in which to discover truth, and at the same time to recognize that there is nothing in the structure of the universe which justifies acquiring knowledge."[v] Now he asserts here [that] science, the method of science—meaning of course modern science—is the only way in which to discover truth. Nagel seems to be an authority for him. Nagel says, in effect, the same thing in the introduction to his book. But in this discussion of causality, rather in the center of the book, he says that the basis of modern science is a logically arbitrary decision. And this means in effect that science is *not* the only way leading to truth, because then it wouldn't be arbitrary. So his criticism at this point is simply based on the fact that he does not know his own position as maintained by the authorities of positivism.

Then there follows a second argument which is too long to read and which has to do with what he calls my attempt to fuse normative and descriptive judgments; in other words, my questioning of the possibility of consistently and comprehensively to keep out value judgments from social science. Now[3] what is the issue? Very briefly, I would never use the distinction between facts and values, or fact and value judgments, except ironically or in polemics. When I have to argue out with someone who maintains the distinction, then I would of course be compelled to use it. As to the distinction between normative and descriptive, I would simply say that an assertion, for example, "This is a well-written essay,"[4] is a descriptive assertion as much as "an essay of eighteen pages." One would have to dig much deeper in order to find a proper equivalent of the distinction between normative and descriptive which seems to be so evident to Rothman.

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[i] Stanley Rothman, "Rejoinder to Cropsey," *American Political Science Review* 56 (1962): 682-86.
[ii] Stanley Rothman, "The Revival of Classical Political Philosophy: A Critique," *American Political Science Review* 56 (1962): 341-52; Joseph Cropsey, "The Revival of Classical Political Philosophy: A Reply to Rothman," *American Political Science Review* 56 (1962): 353-59.
[iii] In original: "*viz*."
[iv] "Rejoinder to Cropsey," 682.
[v] "Rejoinder to Cropsey," 682-83.

In the second chapter of my *Natural Right and History* I discuss the case which I may call the case of the blundering general,[vi] with a title reminding of Erle Stanley Gardner,[vii] in which an example was taken from Max Weber, when Max Weber describes the case of a general whose actions are to be explained causally. And in order to do that properly, Weber asserts, we have to have a clear notion of what would be [a] rational action in the circumstances; and if the action is rational in the circumstances, there is no further need to explain because he acted as a rational general would have acted. But if he deviates from that rational schema, then a special causal explanation is needed; for example, he was drunk or he hadn't slept enough or he didn't know something which he *could* have known, and *n* other explanations. So Weber admits when he discusses this case that when we look at the picture, what we see then of this particular general who did not act strictly rationally, we might come to the conclusion that he was a particularly inept general. Now this is of course an objective value judgment. He was meant to be a general. He is measured by the standard inherent in the situation, and Weber admits we cannot but say on the basis of the evidence, the objective evidence, that he was an inept general, which is, to repeat, a value judgment. Weber does not deny it, but he simply says that is of no interest to us because we are not interested whether he is inept or not; we are only interested in a causal explanation.

But this is of course absolutely uninteresting, whether Weber was particularly interested in a causal explanation. The main point is that he cannot do his job as a social scientist properly without making value judgments. For this reason, I would say the distinction between normative and descriptive doesn't necessarily come in here. What I do contend is that it is absolutely impossible to speak intelligently and comprehensively about human things without distinguishing between higher and lower, better and worse, or something of this kind, and that these distinctions are not always easy to make. In some cases they are very easy to make; but I admit, in the most interesting cases they are not easy to make or to defend. But this is not a good reason for *abandoning* the attempt to acquire clarity about what is preferable or less preferable. If one cannot say which of two high mountains covered by clouds is higher, we could still say that a mountain is higher than a molehill. Now in most cases we are concerned with the difference between mountains and molehills and not with the very highest mountains, so for practical purposes, our ability to distinguish between mountains and molehills, between, say, a great statesman and a very poor politician, is much more important than the question whether, say, George Washington or Abraham Lincoln was the greatest American president.

Now I must however turn to the third argument of Rothman, which he regards as the most important thing: "Next, and most important, Cropsey denies that Strauss has shifted his position as to the dependence of natural right upon classical cosmology."[viii] I regard this as mere antiquarianism, whether I change my position or not. "He does not, incidentally, deny my point as to Strauss' shift from Hobbes to Machiavelli," which is very amusing because the shift means simply that up to a certain point I thought one could say that Hobbes is the founder of modern political thought, and then I learned gradually, after having understood Hobbes better and also Machiavelli better, that the really epochmaking event is Machiavelli. So if it is bad to learn, I

[vi] *Natural Right and History*, 54-55.
[vii] Erle Stanley Gardner (1889-1970), author of the Perry Mason detective stories, upon which a long-running television program was based. Strauss was a fan of the television program and refers often to it in his courses.
[viii] "Rejoinder to Cropsey," 683.

can't help it. But this only in passing, because it is, I think, quite revealing for this kind of criticism. But this so-called shift of my position regarding the dependence of natural right upon classical cosmology does need a discussion, because it will be helpful for what we are going to discuss later.

Now what is the issue? And I will illustrate it first by two quotations. One I take for simplicity's sake from Richard Hooker's *[Of] the Laws of Ecclesiastical Polity*, in this only edition which is easily obtainable,[ix] page 150.

"All things that are, have some operation not violent or casual. Neither doth anything ever begin to exercise the same, without some fore-conceived end for which it worketh. And the end which it worketh for is not obtained, unless the work be also fit to obtain by [i.e., the means must be agreeable to the end—LS]. For unto every end every operation will not serve. That which doth assign unto each thing the kind, that which doth moderate the force and power, that which doth appoint the form and measure of working, the same we term a Law."[x]

So this is a definition of law in the widest sense, comprising as much laws of planetary motion as well as what are now called biological or sociological laws. The key point is that law is not intelligible—regularity of behavior, one could also say, is not intelligible—but with a view to some end. *All* things that are—even the falling stone has some operation with a view to an end. This is the old Aristotelian view which one may call for simplicity's sake the teleological view, and this was surely the basis of the most developed natural law teaching of the past.

Now I read to you a statement written about sixty, seventy years later, from Spinoza's *Theological-Political Treatise*, chapter 4, beginning. "The name law, the word law, taken absolutely, signifies that according to which each individual or all individuals of the same species or some of them act in one and the same certain and determinate manner."[xi] You see, in this definition there is no word said about end. The regularity of action and the certainty of action: that they all act in the same way. Hooker did not assume that. Hooker only said they all *tend* towards the same end. Whether they achieve the end is perfectly open, so that the actions, say, of human beings, differ very widely, and yet they can nevertheless be said to tend, rightly or wrongly, perversely or soberly, to one and the same end. Here the consideration of end is completely out. And this is of course the notion of law which became triumphant in modern times.

Teleology means there is no necessity that there be universally the same behavior, external overt behavior. In the nonteleological view, which I illustrated by Spinoza, there is no end but universally the same behavior. Now the teleological view, if fully developed, means a teleological cosmology, and this was developed by Aristotle. Modern natural science is nonteleological. And modern natural science has had, as we all know, tremendous successes, successes demonstrated even to the complete layman by modern technology. What modern man

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[ix] Richard Hooker, *Of the Laws of Ecclesiastical Polity*, vol. 1 (London: J. M. Dent, New York: E. P. Dutton, 1907), 150.
[x] Book 1, chapter 2.
[xi] Strauss's translation. See Baruch Spinoza, *Theological-Political Treatise* (Gebhardt Edition), trans. Samuel Shirley (Indianapolis: Hackett, 1991), 48.

can do on the basis of science is of course an argument for a certain truth of modern natural science. Hence it is clear that some revision of Aristotle's cosmology is necessary, as I believe is today universally admitted. Since I do not like to haggle, and even *appear* to haggle, I spoke of a victory of modern natural science in the introduction of my book on *Natural Right and History*.[xii] And my so-called shift consists in the fact that there are statements in other publications of mine, even in *Natural Right and History*, which do not take for granted this victory, and I have to explain this very briefly.

In order to achieve the revision of Aristotle's cosmology properly, one would have to be a cosmologist or, as we say today, physicist, which I am not. But on the other hand, this much I believe we can say: if we take modern natural science, modern nonteleological natural science, and try to apply it to human affairs we do not achieve a solution. This leads in effect to a distortion of the understanding of human things. The key point is this, and this has in itself nothing to do with teleology, at least not with teleology as ordinarily understood. Modern natural science, if it is left entirely to itself and not influenced by other considerations, implies the denial of essential differences. The most popular example of that is the theory of evolution. There is no essential difference between man and the brutes, because man has developed out of the brutes and there are cases of men, either today or in the remote past, who are closer to some living or extinct apes than these men are to other men. You now have learned this in grade schools so I don't have to labor that point, the denial of essential differences. And this implies the understanding of what we popularly surely would call the higher, namely, man, to the lower: to understand man as much in terms of the brutish as possible; of the human in terms of the subhuman; of the rational in terms of the subrational. You can see this in more or less complicated forms in Marxism on the one hand, in the reduction of the whole higher life of man to the modes of production on the one hand, and in psychoanalysis on the other.

Seeing that fact, that the approach which is peculiar to modern natural science leads to a distortion to the human phenomena, the most convenient thing to do is to speak of a dualism of the sciences, the sciences of nature and the sciences of man as man. Something of this distinction is surely known in this country. It was more generally known in Germany, where distinctions were made, for example, between the natural and the cultural sciences, with the understanding that they are distinguished from each other not *only* by subject matter but also by their methods and questions. So this dualism of sciences is a convenient practical solution, and you must have heard such expressions, for example, as the humanistic understanding of man in opposition to a merely scientific understanding of man. This is one way of putting that. But, and here I agree with the positivists, there is a need for an ultimate unity of science. So this dualism of science can be accepted only as provisionally indispensable. But this comprehensive science is today only a pious wish, and therefore one cannot say more than it is to be desired.

This is one point of the question which Rothman brings up. The other is the following point, which he does not bring up. Now, when we speak of Aristotelian cosmology and the cosmology implied in modern natural science, cosmology has two very different meanings, and that is due to the fact that the relation of cosmology to common sense is different in the two cases. Aristotelian cosmology is in harmony with what we may call the commonsense understanding of things in general and of the human and political things in particular. That the earth is in the center, that the

[xii] *Natural Right and History*, 8.

sun moves, rises, and sets whereas the earth stands, is the way in which common sense sees the situation. Similarly in what Aristotle says about human things. But to limit myself entirely to what this means in regard to political or social matters, Aristotle's understanding of social and political matters is in principle the citizen's understanding. It tries to be clearer, but it is in principle the same understanding which the citizen has, whereas if you take especially present-day scientific political science, it breaks fundamentally with the citizen's understanding and tries to find its bearings in an entirely different way. Let me state this in the most general terms: *all* cosmology—Aristotelian, or modern, or what have you—must start from the world as given, from the world in which the sun rises in the east and sets in the west, and the earth is resting. It must ascend from the world as given to its causes. Aristotle takes this starting point, the world as given, more seriously than all other cosmologies, and for this reason Aristotelian cosmology, regardless of whether it is tenable in its details, has a kind of theoretical superiority, and this I had also in mind. Rothman is unaware of these complications and doesn't understand that.

One last point. I mention only what he says in the last point. He accuses me practically of subversion of American principles, and I can only say, If this is so, this is not the fit subject for an article in the *American Political Science Review*, this should be a matter for the FBI. I would absolutely be in favor that I be investigated. Since I never was investigated, I would enjoy the experience.

Let us leave it at these remarks, and before I turn to my second item, historicism, I would like to find out whether there is any point which you would like to bring up. An adequate discussion of the issue raised by positivism would require at least a whole quarter, of course. That goes without saying. I cannot possibly do that. On the other hand, I cannot leave it at simply saying, "Read, say, my earlier publications on that," because lectures have exactly the function to facilitate the understanding of things which are not so easily intelligible when merely written or printed. Yes?

Student: I do not quite see yet why you say that scientific knowledge cannot be superior in cognitive dignity simply because it is based on a historically-conditioned decision or historical accidental decision.

LS: Well, I can only reproduce what Nagel said. The preference given to modern science, I mean to the principles on which it was based, is logically arbitrary. And therefore this implies of course you could also take another way, you could also take another interpretation of the causality principle. Then you would never get modern natural science; you would get God knows what.

Same Student: I do understand this, but this does not imply either that science itself is logically arbitrary, nor that it is either superior or inferior in cognitive dignity to other modes of knowledge.

LS: It is neither inferior nor superior to other modes of knowledge, you said.

Same Student: Well—

LS: That is what he's saying.

Same Student: Yes.

LS: That's what he says. And therefore the preference given to it is logically arbitrary. Don't you see that? When you say, you have *n* ways, "I pick this," that's arbitrary unless you show that it is *the* superior. That he cannot show. That was the old way. You see, this has happened in positivism in the last fifty years. Oh yes, the last fifty years. The traditional view was [that] scientific understanding, say the Newtonian physics, is *the* perfection of ordinary understanding. The Newtonian laws are only in the most developed form the same thing which we do when we say this chair has been put there. You know? It's a causal judgment. Now if this is fully developed, then we arrive at something like Newtonian physics. Scientific understanding is the perfection of the natural understanding, and this is of course still lingering on but it is no longer *theoretically* defensible. That is the point. Somehow in the last part of the nineteenth century, people became aware of the fact that scientific understanding is not unqualifiedly the perfection of natural understanding. If you read Henry Adams's autobiography,[xiii] in the chapters dealing with his scientific studies, you will have a very good account of this change which took place roughly between 1860 and 1890. The notion, to repeat, that scientific understanding is *the* perfection of the human understanding had to be abandoned. And then *hinc illae lacrimae*: from here all these tears which should be shed by everyone who is in that boat. Did I make my point clear to you now? Did I make my point clear?

The only step which I would have to take now, which I have taken in my exposition, is the step from "logically arbitrary" to "historical decision." But that is very easy because these are not arbitrary acts of an individual here[5] and of an individual there, but these were acts which determined the character of a whole society and today, in a way, of all human beings in *any* place of the world, because this scientific interpretation of the world, theoretically or in its practical consequences, affects all men now, as you surely know. Now?

Same Student: I assume that Nagel would then argue that the superior cognitive dignity, as you say, of modern science is justified in pragmatic terms. But this, I suppose, you would dispose of in terms of your own argument—

LS: Of *his* argument, no, of his argument. What is the pragmatic superiority?

Same Student: Success.

LS: What does that mean?

Same Student: That it works.

LS: No, no. But what does working mean? It means, if I may say so, to give a simple example, the abolition of certain epidemic diseases, to mention a simple thing. Good? For example. And also jet planes and these other things. But these all presuppose value judgments. Don't you see that? That he can never afford to do. In former times[6] there[7] [was] a certain simple view, which

[xiii] *The Education of Henry Adams* (1918).

of course still lingers on, and this says science is *the* perfection of the human understanding because it is the most perfect way for increasing human happiness. Men are healthier, they live longer, and there is great abundance of all kinds of goods—you know, housing and whatever you have. You know that. That is surely practically very important. But within the academic halls, however, where people have to give a theoretical account of what they are doing, this does no longer work. No one can today say in an academic context, "This and this is the purpose of science." Science, positivistic epistemology or methodology, however you call it, can answer the question, I suppose, What is science?, i.e., what are the right scientific procedures and this kind of thing. It cannot answer the question, Why science? Any answer given there, high or low, is a value judgment, and by definition value judgments are excluded. It is impossible. No, it is nothing to laugh about. It is a crisis, the intellectual crisis to which there is no parallel, because from the very beginning of science it was always understood that science is a very high activity, perhaps not the highest,[8] but a very high activity both for its own sake and for the sake of its consequences. This answer can no longer be given. I have tried to show it in my criticism of Max Weber. Max Weber has no longer the possibility of distinguishing consistently between stamp-collecting and science. No, I mean this—the reason being, no value judgments. You wanted to say something.

Student: I see that there has to be a value judgment, and of course Nagel says he admits some value judgments, but I don't see any contradiction between saying in the chapter on causality that the value of science—the choice of science is logically arbitrary, and then in his introduction, or preface, saying hypothetically: If you *do* grant the value of understanding why things happen the way they do, and if you do grant the test of making things work as the test of whether you understand why things happen the way they do, then hypothetically, if you have this value, then the question is over, the cognitive value of science is established.

LS: But what you do postpones only the arbitrariness still further back. You only ascribe the arbitrariness already to our need of ordinary knowledge, for example, of finding our way out of this room to the street. But I would say that one must take a somewhat extreme and not sensible view to deny the value of knowledge altogether. It is impossible to live on *any* level without having some knowledge of one's "environment."

Same Student: But this is exactly the point he is making in the preface. I think that—

LS: Yes, but then he tries—I think that is a sound beginning and it would be fantastic, in my opinion, to deny that. But then he argues, granting,[9] for example, cattleraising—we need food in one way or the other and we need some knowledge for that food. And now he says very reasonably that this knowledge of food which, say, a simple farmer or hunter has is extremely limited and based on all kinds of accidents. We must proceed methodically and systematically, and this methodic and systematic knowledge of our environment is in its most perfected form modern natural science. That is perfectly all right. So I would say in his introduction he in effect proves—not very exactly, but sufficiently for the purpose—that the scientific understanding is the perfection of the ordinary commonsense understanding of the non-human environment. That is perfectly all right. But then why does he[10] later say this perfection, what seemed to be *the* perfection, is only one mode among many which has been arbitrarily but decisively preferred? Because we cannot get out, we cannot jump off this train.

Same Student: He might say it would come to the meaning of what you mean by logically arbitrary as opposed to really arbitrary. That is just because in logic you cannot find a strict verification of a value from a fact. That's all he means there. For instance, to know how things work, that's a value—

LS: [11]What he means[12] here[13], [concerning the][14] principle of causality, somehow men cannot live without raising the question why. And this is, you can say, the most general and simple meaning of causality. And now he says there are *n* interpretations of that, because that is much too general and vague: *n* specific interpretations. One particular interpretation is that underlying modern natural science. It is not intrinsically superior to any other mode; therefore the preference for it is arbitrary. As he puts it, that is logically arbitrary. That is perfectly unambiguous, what he means by that.

Student: I think you could also say that the desire to live is logically arbitrary. That does not mean it is arbitrary.

LS: That is correct. He would say that. Yes, but still—but the question is: Is everything logically arbitrary? Obviously not. Otherwise it wouldn't make sense to speak of logic.

Student: . . .

LS: Yes, sure he would say that. Oh sure, naturally, but there are however things which are not logically arbitrary.

Student: The whole point is that he has a special meaning for logically arbitrary.

LS: No special meaning: simply that it is not evidently necessary. That's clear. But there are things which are evidently necessary. For example, if you have a certain system of certain premises, then the conclusions follow necessarily. That's not arbitrary. But what is the mistake which, in your opinion, I make?

Student: I think that all he is saying when he says it is logically arbitrary is that he can't understand how you can logically by, say, calculus or symbolic logic imply a value statement from a fact statement.

LS: That is not the question here. Here we are not concerned with factual questions. We are concerned with one interpretation of a theoretical principle, not a value judgment: the principle of causality.

Student: If he holds that every value is logically arbitrary—

LS: Yes, sure. But here it is not a question of value but of a theoretical premise.

Student: But the value of a theoretical principle.

LS: Yes, but value: what does it mean here? I mean, what is the relation of, say, modern science compared to a West Indian medicine man's knowledge of nature? What is the relation? Now in former times people would have said, without any hesitation, what the medicine man does is not strictly speaking knowledge. So there are certain patches of knowledge, but connected with all kinds of fantastic and wholly unwarranted assumptions, say, superstitions. And of course science is superior to it because it avoids the typical mistakes which these men make. This is a view Nagel presents in the introduction and that would again mean, to repeat, that modern science is *the* perfection of the human understanding. And that is in itself a perfectly defensible assertion. But when it comes, however, to a precise discussion, what is the key principle of modern science in its peculiarity, this principle of causality, then he says it is logically arbitrary. Instead he would have to show that this is the most intelligent understanding of causality implied somehow in a very incipient and germinal way in all problems.

Student: What do you mean by[15] [historicism having a higher cognitive dignity than positivism]?

LS: Because it makes something the theme which is the premise of the others who do not make it a theme. Take a simple example. For example, in our ordinary understanding of science today the fundamental principles are discussed in physics, whereas in chemistry, biology, and so on, they are always applied. Physics does not presuppose biology, but biology presupposes physics. Physics is in this sense cognitively higher. Mathematics would in a way be still higher. So if the ultimate premise of modern science is a logically arbitrary decision, a historical decision, as such related to other historical decisions like Islam, Christianity, Judaism, Confucianism, or what have you, then the science dealing with the highest principles would not be logic but would be historicity, in this sense, of course, not the study of some particular archives, you know, but of the universal history. The understanding of this prime fundamental historical decision, that would be the highest science from this point.

Student: Why? . . .

LS: More fundamental.

Student: . . .

LS: Oh no, I didn't mean anything moral about the word dignity. I meant that it is[16] [cognitively] higher because it deals with something transcending the other sciences—you can also say it goes deeper.

Student: What I think you're saying then is that if one says that modern science is the perfection of understanding, of the techniques of knowledge, is the perfect or the highest, and also says that it is not logically necessary, then it follows that it can only be the perfection of understanding if it is the right means towards a certain end. And this Nagel refuses—

LS: That is not necessary. I mean, that might come in, but it is not necessary. If you assume that man is a being which is capable of knowledge in a peculiar way in which no other brute, even if it is only a difference of degree—I do not have to go into that now,[17]regardless of what the use of

that is—but man simply is the being which cannot live out its life without being concerned with knowledge to some extent,[18] then the question arises: Which is the more developed, the less developed, and perhaps the highest developed kind of knowledge?

Student: . . .

LS: In what way? With the values? No, I would like to keep it separate from that because I think it can be treated separately.

Student: It seems to refer back to your answer to the previous question that physics has more cognitive dignity than biology since biology presupposes physics. Mathematics has more cognitive dignity than physics, etc.

LS: It is not quite the same question.

Student: When Nagel in the passage you quoted said that the choice of science as a means towards understanding was logically arbitrary, he says it is logically arbitrary, but by that he doesn't mean that it is simply arbitrary. Mr. Nagel, I believe, would hold that contingently we can through investigation discover the causes of human behavior. This is, I think, Nagel's point. He goes on to say that science is—well, through actual practice and experiment we can discover the causes of human behavior.[19]

LS: I can only say this. If by a process of trial and error, as other people said it, the procedure of present-day natural science has proved to be superior to any earlier form of science, modern or non-modern, then it doesn't make sense to speak of [it as] logically arbitrary. Then it is of course *proven* to be superior according to perfectly sufficient standards, that, say, Newton's—not only theories, but his methods, have proven to be inadequate where new phenomena were discovered and improvement has taken place; and since there was a continuous process it is reasonable to assume that what present-day physicists do, and therefore also chemists and so on, is methodically the most perfect thing, the highest development of science hitherto. That is, I am sure, what most physicists would think. But we are concerned with the fact that a logician, a philosopher of sorts,[20] he speaks of a logical arbitrariness and this, I think, is of the utmost importance. And I must only say this is not only in Nagel. I could have quoted others. It so happened that I looked at Nagel's book. If you read Henry Adams's autobiography,[xiv] how he looked at science in say, 1860—you know, when Darwin seemed to have solved the problem of life—and then when he came back to it after a long interruption, say, around 1890—and he was not a scientist, but he was an intelligent observer, by all means—and then he saw not only that in biology things had not gone as well as they looked to go in 1860, but that the general understanding of science, you know, in the works of logic and epistemology, had been radically changed. It had become much more "modest." But this is of course a very general word, modesty. The modesty consisted in a reinterpretation of the meaning of science of which present-day logical positivism is the most recent form.

Student: I wonder if you would elaborate on the conclusion you draw from the fact that modern science does not make essential differences.

[xiv] Henry Adams, *The Education of Henry Adams* (1907).

LS: Yes, I gave the simplest example and that is evolution, that there are transitions from one species to the other and from plants to animals, and what have you. There are no *essential* differences, and this shows itself in the study of man in particular. From the older point of view, one would start in the understanding of man of what is, perhaps the *specific* difference of man, and to try to understand even the state of a human baby in contradistinction to that of a newborn puppy in terms of their specific differences. Today the opposite tendency prevails: to understand the specifically human in terms of what is at least common to man and the brutes or, most importantly, the brutes nearest to man. Now I give you a simple example from within political science. In former times the general understanding was there is a variety of regimes; say, today liberal democracy and communism are the most important examples. But there are an infinite variety of others. Today there is a tendency not to start from the essential difference of the two but from things which are common to all regimes and to understand the specific difference; I mean, to reduce as it were the specific difference to a common denominator going through all. In a schematic way you have freedom and suppression under every regime, and it is only a difference of degree. Say, in communism, the degree of freedom is twenty and of suppression is eighty, and in a liberal democracy it is roughly the inverse, where the meaning of the whole regime, the peculiar character, is lost in a neutral description of this kind.

Student: . . .

LS: We have in the older science—how common sense makes the distinction between animate and inanimate beings. What does biochemistry, and such things, do? They try to understand the animate things in terms of the inanimate. The distinction between animate and inanimate is supposed to be a popular distinction which, with the perfection of science, will give way to an understanding of the life in purely physical, chemical, terms. I mean, there is evidence.

Student: . . .

LS: Yes, sure.[xv] Yes, sure, the fundamental premise is homogeneity, sure. But how this works out—whether this is visible in practice immediately—is another question. But fundamentally, it must be.

Student: I'm a little bit confused. Sometimes you seem to be saying that our interpretation of causality is arbitrary. Other times you seem to be saying that causality itself is arbitrary.

LS: Yes, even that, by the way, is a great question, causality itself. What is the status of causality? What is even the status of the principle of contradiction in logical positivism? I could not go into that in this very brief discussion. What is it? These cannot possibly be empirical principles. Impossible.[21] Empirical statements proper can only be said to be strictly valid on the basis of our knowledge acquired hitherto. Whenever you go beyond that, then a non-empirical principle enters. Now the principle of contradiction is surely not meant to be: Up to now, it didn't work if we contradicted ourselves. But it means whenever and wherever, on which[ever] planet people think, people speak, they talk nonsense, strictly speaking nonsense, when they make self-contradictory statements. I mean, not going back into deeper things, but the Kantian

[xv] The tape was changed at this point.

view is that these are so-called *a priori* principles. Logical positivism, or positivism in any form denies the *a priori*. What can it be? Is it a stipulation? Is it a stipulation that we say—it wouldn't make sense to say a stipulation[22]—if it is merely a stipulation then you can say we could also stipulate differently, which you cannot do in the case of the principle of contradiction. Yes, this will be the last question then, because we must continue.

Student: You said it was universally acknowledged that revision is needed in Aristotle's cosmology. Does this necessarily mean that revision is needed in his ethics?

LS: No, surely not. But still it is not a simple thing. I mean, one has to consider that, whether it does not lead to *some* revisions. But not in principle. One can simply say this, I mean, speaking colloquially: that even if modern science is radically superior as science of non-human things to Aristotelian science, nothing would follow regarding its superiority in the understanding of human things if there *is* an essential difference between human things and non-human things, human beings and non-human beings. I know that we could go on, and in a way should go on for some time, but there may be other occasions. And I must now continue with my argument because, after all, this is only preparatory: to awaken a sense, if I succeed in that, in not being so certain that the views now prevailing are so *compellingly* true and adequate, [or] that notions now rejected deserve to be in the dustbin of history.

Now I would like now to turn to a discussion of historicism, and that is somehow more difficult as you will see while I proceed. I will again start from the outside. In the early nineteenth century, there emerged a school in Germany which called itself the historical school. That was the first time anywhere that there emerged a historical school. That was something new. And this was in law, in economics, in practical fields. And this spread over the whole Western world. And the famous document in the English tongue of this early movement is Sir Henry Sumner Maine and especially his book *Ancient Law*,[xvi] which I would like you to read, apart from all other reasons, because it is so well written. You will learn something about ancient law there. It is easily accessible in Oxford World Classics edition. But the full-fledged historicism, to say this right at the beginning, is best represented in English by Collingwood, both in his autobiography and his book *Idea of History*.[xvii] His autobiography is one of the best-written philosophic books of our century.

Now what does this mean, historicism? Historicism is based on what people call the discovery of history. An intellectual revolution which took place at about the end of the eighteenth century. Now what does this discovery of history mean? What was history *prior* to that discovery? Now we take the very word history which is of Greek origin, *historiē*, this means in itself only inquiry. The term natural history, which I believe is still used, at the museum of natural history, I believe, in the very south side of Chicago,[xviii] so natural history is the inquiry about natural things. And there can also be therefore civil history, as it was sometimes called, an inquiry about political matters. But it soon took on the meaning of a special kind of inquiry, namely, a kind of inquiry where you have to inquire with other human beings. For example, in natural history you want to

[xvi] Henry Sumner Maine, *Ancient Law*, *its connection with the early history of society and its relation to modern ideas* (1861). Available online at https://oll.libertyfund.org/titles/maine-ancient-law.
[xvii] R. G. Collingwood (1889-1943), *Autobiography* (1939), *The Idea of History* (1946).
[xviii] The Museum of Natural History, now part of Museum Campus along the lakeshore at 11th Street.

describe a strange bird or insect. It is not necessary that you have to ask other people about it; you can look at the bird. But in other kinds of things, namely, the things which happened while you were not yet born, you must inquire with other human beings. Because if you read their books or talk to your grandfather, that is not fundamentally different. In both cases, you inquire with other human beings, with those present at the time, the old ones. History came then came to mean more specifically, already in classical antiquity, an inquiry about what men did and suffered, and not about birds and insects. Then it came to mean the *records* in which the results of such inquiry are laid down, i.e., the history books. History meant only inquiry and record of a certain kind, it did not mean a dimension of reality. That it came to mean only in the nineteenth century where you find such distinctions as nature and history. Two different fields of reality.[23] A discovery of history, if it is a discovery, can only have the latter meaning, the discovery of a part of reality which was previously not understood as such a part of reality. The term "philosophy of history" was coined only in 1750 by Voltaire, and still has the primary meaning there, namely, a philosophic study of the records of what men have done and suffered in various ages.[24] Sometimes people say the discovery of history has taken place in the Old Testament. This is surely not correct, although there is something which they have in mind, but not properly expressed. There is no Hebrew word for history. In present-day Hebrew, the word for history is "*historia*," which you obviously see is the Greek word. Therefore, I would also take exception to those who speak of the theology of history in Augustine, for example. These are all loose expressions which prevent understanding.

Now let us then come a bit closer. The discovery of history is sometimes said to be the discovery of the *infinite* variety of customs, beliefs, and so on. For example, you must find this: that, say, a man like David Hume, a famous, not only philosopher, but also historian, still took it for granted that the customs and preferences of the English or Scotch gentlemen of the late eighteenth century, that these are the only *right* preferences. And then in the nineteenth century people came to see that the preferences, say, of the Chinese are as good and as respectable as those of the British MP of the nineteenth century and so on. Now, but this infinite variety of customs and beliefs was *always* known, and as proof I mention a single instance. Read the first ten lines of the *Odyssey* where Odysseus is described as traveling, he had seen and understood the mind of many men, meaning the variety of minds. And if someone thinks that is too little, then I refer him to Herodotus. So this is not a proper description of what the discovery of history is. In order to understand the meaning of the discovery, the alleged discovery, one must start from the relation of philosophy and history in prehistoricist thought. Philosophy was understood originally, and by Plato, Aristotle, as the *ascent* from opinion to knowledge. Opinion means not only a man's *private* opinions, but it means of course also the opinions *authoritative* in a society, which can be called the *nomos* of the society. I will use frequently the word *nomos*. That is the common Greek word for law, but has a much broader meaning than the word law with us. It means of course also custom. It means also something like authoritative opinions.

So philosophy is an ascent from such *nomos* to knowledge, from an infinite variety of opinions to *the* truth. Yet this ascent does not lead immediately to the desired result; the first efforts are necessarily clumsy. It takes some centuries until it is completed. This is the view presented in the first book of Aristotle's *Metaphysics*. At a certain time, people began to think philosophically and it took centuries until this was completed. Now Aristotle goes even beyond that. He shows that it could hardly be different than it was, that the succession of these successive epochs was

reasonable, i.e., the simplest and the clumsiest solutions, so to speak, came first, and the more sophisticated and refined later. Now, but what does Aristotle mean when he does that? He does not give a history of philosophy. Nothing of the kind. But he wishes to show that *his* view of causes is *the* sound view, and therefore he looks around at the other philosophers, and sees what they have said about causes; and then he shows what they have said was all less complete, less clear, than what he has said. His intention is not to give a history. A philosophic history of philosophy was demanded, one can say, for the first time by Kant. That is to say, at the end of the eighteenth century, when this whole movement started.

Now the sequence of philosophic doctrines, as Aristotle presents it, has nothing to do with things outside of philosophy, except accidentally. For example, philosophy in Athens was rather late. It started in Ionia, eastern coast of the Mediterranean, or in Sicily, much before it came to Athens. And this was not entirely accidental because the Athenians developed courage, daring, only after their victory over the Persians in the[25] [Persian] War, as Aristotle says elsewhere. But this is uninteresting. That Socrates and Plato were Athenians, and Aristotle taught in Athens, that's wholly uninteresting philosophically. But if you go into the question, if you are interested, why philosophy came so late to Athens, Aristotle is perfectly willing to inquire into that and give you his answer. The sequence and variety of philosophic doctrines has no relation whatever of course to *social* changes. Today Marxists or crypto-Marxists try to find an equivalent to the modern conflict between conservatives and liberals, and liberals and socialists, and so on, in Greek thought and try to show that, say, Democritus, that was the left, and Socrates was right. These are *wild* constructions. There is no basis whatever for that.

Now what light does this remark throw on what happened in the nineteenth and twentieth century? Historicism presupposes the essential relevance of philosophy and its changes for social changes and of social changes for philosophy. This was not assumed in former times. Furthermore, according to the older view the typical philosophic alternatives—I express myself very loosely; say, spiritualism, materialism, hedonism and moralism, or what have you—do not die out[26]. They *always* recur. The refutation of a doctrine—say, Aristotle believed he refuted materialism—this refutation has absolutely nothing to do with the future life of the refuted doctrine. There is in other words no progress of thought of mankind at large. When Aristotle refutes these older doctrines, there will be some people who will be convinced by it, but the others will go on, either without any philosophic interest or adhere to another simpler doctrine, period.

You see, I am just trying to illustrate the entirely different way in which these things were viewed prior to 1800. I state it again somewhat differently.[27] Historicism is a specific interpretation of the variety of human thoughts. The variety was always known, but a specific interpretation of that variety, that is historicism. I give you an example. People knew at all times that philosophy, which claims to be the queen of the sciences, is disgraced by a disgraceful variety of philosophic sects. Every child can see that. This result followed. The people who were *impressed* by that variety became skeptics [and] said that philosophy is not possible, it is not possible to acquire philosophic knowledge. Proof: this anarchy of doctrines. But the new thing around 1800 is this, that people said that this variety is not disgraceful and meaningless. It is highly meaning*ful*. For example—that is an example I have used I believe *n* times; I still use it: We have the political doctrine of Aristotle; we have the political doctrine of Locke. They are

incompatible with one another. Either Aristotle is right or Locke is right, or maybe both are wrong. But how does it look from this new point of view? You look at Locke [LS writes on the blackboard] and here, Aristotle. And then you see that Locke wrote somehow in connection with the Glorious Rebellion, 1688. And then you look at Aristotle and see that had something to do with fourth-century Athens or fourth-century Greece. And you look at all this large variety and then you discover an *order*, a law. The law can be stated as follows. Doctrine is function of time, time meaning here epoch or something of this kind. This sequence of thoughts, of philosophic thoughts in particular, is a *meaningful* sequence. It could not have been different. Locke's doctrine could not have preceded Aristotle's doctrine and [the opposite] is not true. The doctrine is a function of time, that is to say of religious, political, economic, technological, and so on and so on, state of things. Differently stated, the philosopher is necessarily the son of his time. All philosophic thought is essentially related to a time, which does not necessarily mean of course that he swallows all prejudices of his time. He can be the most severe critic of these prejudices, but then he would be related through being a critic, he would be *related* to the opinions of his time—a thought expressed by Nietzsche by saying that the philosopher is a stepson of his time. But surely he belongs essentially to a time.

The discovery of history means then the discovery of the fact that theoretical thought is essentially dependent on specific, *extra*-theoretical premises, which are inevitable or evident at a given epoch, but not universally. Now is this clear? In other words, according to the traditional view, there are of course first principles. Take a simple thing. We have such things as the principle of identity or contradiction or whatever it may be. The first principles. And these first principles are of course unchanging, eternal. But now it is said in a way which is perhaps to begin with wholly unintelligible, that the highest principles at which we arrive in analyzing any doctrine are not universal but belong to a specific period and are historical. And this way of thinking has influenced all present-day thought, more or less deeply. And I must try to reach the point where each will recognize the phenomenon which I am describing.[28] Mr. . . . ?

Student: In denying philosophy, what does the skeptic say about knowledge, and how does that differ from what a historicist would say?

LS: Historicism is not skepticism.

Student: What did the skeptic say about knowledge?

LS: Impossible. There is no knowledge possible. There is no genuine [knowledge]. We have *opinions*. There are certain kinds of opinions which have a kind of practical plausibility and therefore we live on them. It is not knowledge. Historicism is not skeptical. Historicism is a form which philosophy, non-skeptical philosophy, takes on that I must try to explain.

Student: Do you characterize as historicism the viewpoint that certain dominant thoughts are a product of the time but not all thought?

LS: That is, how should I say, *qualified* historicism. Because then, from the theoretical point of view the emphasis will of course shift to those thoughts which are not affected by historical change. Is this clear? I mean, in addition, this was always admitted, that different ages are

characterized by the predominance of different opinions. That is not in itself interesting. But the interesting point would be if the *highest*, what the human mind wishes to reach, *the* truth is *essentially* historic. This is very hard to understand for anyone still coming, and brought up in the old way of thinking.

Student: Is there a fundamental contradiction between, say, the sociology of knowledge point of view and the traditional point of view?

LS: No, the sociology of knowledge is simply a vulgarized version of historicism, I mean an attempt to reconcile it somehow with the activities of academic sociology. It is not of any great theoretical interest. I mean, Mannheim—the term was coined earlier, "sociology of knowledge"—but Karl Mannheim is probably the most famous man. And Mannheim's book appeared in 1929, I believe, the first book.[xix] This historicist position had been stated in this universal form before in Germany—for example, Troeltsch[xx]—and Mannheim simply tried to combine it with the possibility of a sociological analysis and social improvement, notions which were absent from original historicists. No, I cannot go into the question of sociology of knowledge.

Now the application to natural right is perfectly clear. There cannot be a natural right, because every notion of right which men can have is necessarily a *specific* notion belonging to a *specific* historical situation, a *specific* culture, epoch, or what have you.

Now historicism underwent a development from its beginning up to our time, and the most important change which I can detect is that between what I call *theoretical* historicism and *radical* historicism. The terms are wholly irrelevant. If you have a better term, I shall be glad to accept it.

Student: . . .

LS: Theoretical and radical. I mean, what is the point? Theoretical historicism exempts the historian or the philosopher of history from history. See, everything is historically conditioned or historical, but the historian can stand outside and look at the historical process. He is an onlooker, a spectator. Radical historicism asserts that no one has [any] possibility of standing outside the historical movement or the historical flux. I will develop this more fully. For example, Marxism is in a kind of intermediate position between theoretical historical and radical historicism. We will develop this more fully next time. But I would like to achieve in a discussion at least this much, that you get a notion of what it is about. Is this thesis intelligible, that it is absolutely impossible for man to transcend his historical situation, of course historical situation *broadly* understood, not merely now shortly before the presidential—before the congressional elections of 1962. The views of the future or the image of the future are a part of the historical situation, naturally. I wish you would tell me . . . Mr. Butterworth?

[xix] Karl Mannheim, *Ideologie und Utopie* (Bonn: F. Cohen, 1929) [*Ideology and Utopia: An Introduction to the Sociology of Knowledge*, trans. Louis Wirth and Edward Shils (New York: Harcourt, Brace, and World, 1936)]. See also Mannheim, *Essays on the Sociology of Knowledge* (London: Routledge & Paul, 1952).

[xx] Ernst Troeltsch (1865-1923), German Protestant theologian.

Mr. Butterworth: Just one question. Is your characterization of historicism . . . if by studying Locke's empricisim, say . . . can show it is the same principles, would the thesis then be weakened?

LS: There is something to what you say.[29] That is very good that you bring it up. This notion that doctrines follow each other in an evident necessity, this is not pure historicism, though it becomes an element of it. That was in the clearest form the Hegelian idea. Hegel's philosophy of history and history of philosophy are based on the premise that the sequence of the great philosophic doctrines is *logically* necessary. History is a *rational* process. Historicism proper, however, is characterized by the denial of the rational character of the historical process. This gives it its peculiar sharpness and tinge. From Hegel's point of view, men at all times participated in *the* truth by participating in one particular manifestation of the one and the same reason, having the grasp of some of these principles. But when you look here, for example, at this schema, this does not necessarily mean that the sequence is rational, that Locke could not have preceded Aristotle, that Locke or the Lockean doctrine had to come after. That is historically contingent. A decision, a decision and not a mere consequence or mere dialectical necessity, leads, say, to Locke or to Hegel or to any other doctrine. Hegel's view, which is of course of utmost importance for the genesis of historicism, is not historicism proper for one and the same reason. The historical process is a rational process and that means the historical process must have been completed. How could he prove its rationality if it were not complete? If it had been rational up to now, it is impossible to say what could have happened afterwards. In Hegel's view, history in the decisive respect—regarding the discovery of theoretical and practical principles—is finished, is completed. And then looking backward he can see that the way leading to the fully understood principles was a perfectly orderly and rational way. But if men's thoughts are essentially historical, belonging to an epoch, to [a] specific epoch, and this historical process is *not* a rational process, then the great difficulty arises. Then our highest principles have no evidence other than that they are evident or quasi-evident to us, that they are *imposed* upon us by historic fate, without having any meaning beyond that.

Let me take another popular example. That is Spengler. Spengler of course has been read all over the Western world, and has even had some influence on academic social science, which I happen to know, via Ruth Benedict. Benedict wrote *Patterns of Culture*.[xxi] There is a reference to how important Spengler's notion of culture, of high culture, was for the view of cultures in general. Now is the Spenglerian view? There is a variety of cultures; each develops a view of the whole, a view of the whole both theoretical and practical of its own. And the question of *truth* simply does not make sense. There is a Chinese way of looking at things; there is a Faustic way of looking at things; there is a Greek way of looking at things, and so on. Modern mathematics is superior to Greek mathematics from a modern point of view, but from the Greek point of view it is a decay of mathematics. There is nothing which connects the different cultures. The highest principles are the principles of a specific culture. And as for the fact that modern science has proved to be acceptable all over the world, I mean to Chinese as well as to Westerners, and Africans, and everywhere, he would simply say that does not contradict his thesis. It means merely that modern Western civilization has westernized or is westernizing the whole world. It does not make Western modern science or the modern understanding of the world *the* universal understanding.

[xxi] Ruth Benedict, *Patterns of Culture* (Boston: Houghton Mifflin, 1959).

But in the case of Spengler, who does not belong to the highest rank, surely not, but who is a very suggestive writer, Spengler shows also one difficulty which all these positions have in one way or the other. It is not a mere fad of Spengler that he says, that his book is called something like *The Decline of the West*,[xxii] which means for Spengler the decline of the *last* high culture. Afterwards, there will only be universal decay. That is his thesis. Because the specific character of Western culture as Spengler understands it is that it is the only culture open to the appreciation of all cultures. All other cultures make distinctions between the insiders and the barbarians outside, whatever terms they may have used. The Western culture is the only which recognizes the other cultures and is passionately interested in understanding each in its specific character. This however means that Western culture is the only culture which has arrived at the true understanding of culture. In Western culture, we may say culture as culture has come to full consciousness of itself and for this reason it is the final culture. In other words, there is a kind of Hegelianism in spite of all appearances to the contrary in Spengler. I wish some example would occur to me which would make clear to you, to all of you, immediately what I am driving at. The reference to sociology of knowledge was helpful. But you see, sociology of knowledge somehow exempts itself from historicism, doesn't it, I mean by means of the scientific method, at least in the American interpretation. The scientific method which is not understood to be historically contingent, but *the* method. It exempts itself somehow.

Student: . . .

LS: Sure, I would say the more reflective ones probably not. That is the same difficulty we had regarding Nagel. Same difficulty. That is true. Now does something else occur to you which might be helpful at the present stage, because we cannot now continue. Yes?

Student: . . . question. Based on these ideas . . . of something like God, or something like the soul . . .

LS: Ya, I cannot develop this now, but I would like to give one example. Today people speak about the essential connection between thought and language, which is today very well known. This is perhaps the most popular form of historicism in the Anglo-Saxon world. Because if thought is essentially dependent on language, i.e., not a symbolic language, merely symbolic language, but on this or that language, then thought is of course essentially English or Chinese or German or what have you. Now as for the precise point you were trying to make, now I see that is indeed the key point. From a radical historicist point of view, it is impossible to have this kind of reductions. Let me explain that. All human thought rests ultimately on what Collingwood called "absolute presuppositions,"[xxiii] presuppositions which can no longer be derived from anything else and which however are specific, they belong to this culture, this historical situation or what have you. Being the absolute presuppositions they cannot be analyzed. They may be stated. They may be expressed but they cannot be analyzed, properly speaking, because every analysis presupposes already the actual presuppositions. Every analysis is already formed, colored by the *specific* absolute presuppositions of the culture, the epoch, and so on, in question. Therefore, for example, to explain, say, Rousseau in terms of the French situation in the eighteenth century would always be a very superficial business, because what are the categories

[xxii] Oswald Spengler, *The Decline of the West* (NY: A. A. Knopf, 1932).
[xxiii] R. G. Collingwood, *Essay on Metaphysics* (1940).

you use in this interpretation? They are derivative from some fundamental premises which are exactly the point to understand, but not to *reduce* to something else. The absolute presuppositions are *irreducible* to anything else.

Student: But then is there a necessary . . . these presuppositions? There can also be—the basis of my choice—I either accept or I reject . . .

LS: Even your rejection would be nevertheless tinged by that. In other words, an intellectual anarchist, if we may speak of that, in the twentieth century would be an American twentieth century-anarchist, and his anarchism would have a radically different character from the same anarchist, say, in fifth-century B.C. in China. You know? I mean, you cannot run away from it. You can commit suicide,[30] but they would even say even the suicide changes its meaning.

Student: . . . suicide . . .

LS: Ya, of suicide man is capable in all cultures, but the meaning of it and not merely whether it is permitted or prohibited, how the suicide understand itself, depends radically on the absolute presuppositions of the culture to which he belongs. Even if there is a low stratum, say, hunger, for example, feeding or hunger, which is not affected by social variety, this raises a difficulty. But still, they could nevertheless say, if there is something unchanged by historical variety, then it belongs as they would say to the merely biological and not the distinctly human. We have to take this up more fully next time. Good.

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[1] Deleted "Now, [inaudible words] a moment, in case there is anyone here who has difficulty in hearing, he or she should draw my attention to it. What about those sitting in the back? All right?"
[2] Deleted "as we say, the."
[3] Deleted ", I must say I—."
[4] Deleted "I would say that."
[5] Switched "an individual" and "here."
[6] Deleted "—I mean, and this simple view—."
[7] Deleted "is."
[8] Deleted "—that was [inaudible word]—"
[9] Deleted "that, that."
[10] Deleted "then."
[11] Deleted "No, that is—I'm sorry. No, no,".
[12] Deleted "is."
[13] Deleted "there are."
[14] Deleted "say,".
[15] Deleted "the words cognitively higher (?) history being cognitively higher (?)."
[16] Deleted "either."
[17] Deleted "—then you can, of course—."
[18] Deleted "and."
[19] Deleted "Therefore—now, of course, this is [inaudible words]—."
[20] Deleted "that."
[21] Deleted "because they speak with certain–."
[22] Deleted "because then you can say"
[23] Deleted "This, I mean,".
[24] Deleted "There is in the Old Testament—."
[25] Deleted "Peloponnesian [sic]."
[26] Deleted "according to the older view."
[27] Deleted "The emergence of historicism has to do with a particular, no."

[28] Deleted “Does anyone—?”
[29] Deleted “This notion… Let me therefore…”
[30] Deleted “and then you are…”

Session 3: October 15, 1962

Leo Strauss: [I] could have given the course under the title "History of Political Thought from the Point of View of Natural Right," and in fact I will do something of this kind. Now it is impossible to understand anything of natural right if one is not somehow dissatisfied with the views now reigning, because if these views are sound, natural right is simply impossible. Now many people believe natural right is disposed of by the mere fact, say, of anthropology or of ordinary history. There is not a single notion of right which does not differ historically from time and time and from society to society. But this, while being the most popular argument, is the most idiotic argument because this fact was always known, the infinite variety of customs and notions of right. So this is in no way a novel discovery of the nineteenth or twentieth century. What I have to do first is to identify the issue, which is not the fact of the variety of notions of right, and I indicated provisionally the issue by speaking of positivism and historicism as the two most powerful ways of thinking today. And to repeat that again, positivism is the view that the only way toward genuine knowledge is scientific knowledge. But science is incapable to say anything about good or bad, right or wrong. Hence there cannot be knowledge of right, and in particular of natural right, [and this leads to] the historicist view, if it is consistent. I was glad to see last time that someone has heard something or read something of sociology of knowledge, which is a kind of diluted form of historicism. And this, incidentally, shows how historicism affects even positivistic social science. The lines are not so very clearly drawn, but it is indispensable for my purpose to draw the lines clearly so we understand the issue. Now historicism pure would assert that the distinction between values and facts is untenable, that every theoretical system, every system of categories by virtue of which men find their bearings, includes a value system. But they would say these value systems and therefore the notions of right implied in them are essentially historically variable; and therefore there cannot be a natural right.

Now I began last time, or rather the time before, with a criticism of positivism, and for convenience's sake I used the article or the communication by Rothman in the recent issue of the *American Political Science Review* as well as a book by Nagel on which Rothman's criticism is based. I have been told, in a way to my regret, that my criticism was not fair—that this some of you felt—and I'm of course very anxious to be fair. Now therefore [1]unfortunately I have to say a few more words about this subject. Now I will speak with utmost frankness so that you can understand any misdemeanor on my part. I have dedicated some decades to this kind of subjects, and my first impression and my second impression, final impression is that Rothman believes he can dispose of my work without having given any indication whatsoever that he has invested a comparable amount of reflection and study. This is a wrong kind of egalitarianism, that everyone is as competent to judge as everybody else. That's not so. One must do something to become competent. Fundamentally he repeats only the things which almost everyone in social science says day after day, opinions which I myself, incidentally, once had. So in other words, I was familiar with the whole argument before having read it. The view which I take now may be wrong, but I do not talk nonsense and I do not glut the market with books and articles. Therefore

I would assume from the point of view of fairness, one should consider what I say, not merely repeat the commonplaces with which I am familiar.

One only has to contrast Rothman with Nagel, his authority. Nagel has given some thought to my arguments and he comes up with the distinction between appraising and characterizing value judgments, which is at least an attempt to see whether I did not have a point. Rothman, of course, does not [make] the slightest attempt[2] to this effect. I am somewhat impatient with hearing the same things with which I am fully familiar constantly repeated, the things which I must be presumed to know if I am not presumed to be entirely illiterate. I was somewhat impatient for another reason, and this appeared[3] on the occasion of Rothman by his combining a critique of my scholarly position with a questioning of my loyalty to the United States.[i] The value-free science is in fact not value-free. It is based on concealed value judgments, as I have asserted more than once and I believe also shown more than once. Value-free science is "liberal" in the present-day American sense of the term "liberal." In the name of scientific objectivity as detached concern only with the value-free truth, in fact it propagates a certain policy, both domestic and foreign. Now I have nothing against propagating it, but what I'm opposed to is that this is propagated in the name of value-free science. One only has to contrast present-day liberal social science with its originator, Max Weber; for Max Weber always insisted that the meaning of value-free science as he understood it is that one should be ready to admit unpleasant truth, not easy to swallow for one's own party, political or whatever it may be. For the present-day average liberal social scientist, there are no truths unpleasant for liberalism. In other words, it is really an amazing form of dogmatism.[4]

[To] all this one could very well reply. Still, I admit having been impatient and one ought not to be impatient, and especially a teacher ought not to be impatient, with which I fully agree. But I am now compelled to devote another part of our valuable time to this issue. I repeat the point as restated by Rothman: science is *the* way to truth. And interpreted, that would mean science does consistently and comprehensively what common sense does inconsistently and only here and there. Science is then *the* perfection of common sense. Modern science as it exists now is the outcome of a long process, by no means finished, of trial and error. Its basic premise is, as Nagel says—not Rothman, but Nagel is the authority for Rothman and therefore we have to impute [to] him this view unless he denies it—the premise, the basic premise of modern science, is logically arbitrary.

I think at this point a certain argument arose. I interpret that to mean that Nagel says this logical arbitrariness has the character of a historical decision made in the seventeenth century, and this leads inevitably over to historicism in the way in which I explained it. Unfortunately, I had to return Nagel's book to the library, and therefore I cannot read to you literally what Nagel says. I believe I have a sufficiently good memory to trust it, but I cannot ask anyone else to believe me. Therefore I will assume that I was wrong in ascribing to Nagel the view that logically arbitrary means historically contingent, a historical decision, and I will follow the line suggested by one of you last time and say logically arbitrary does not mean simply arbitrary. It means rather this: science, while being logically arbitrary, modern science, is the most perfect form of commonsense understanding which we know. It is logically arbitrary because it acquired its form

[i] Stanley Rothman, "The Revival of Classical Political Philosophy: A Critique," *American Political Science Review* 56 (1962): 352.

by the interplay of logic and experiment.[5] That is, I think, what the gentleman last time suggested. I am willing to accept it for argument's sake.

But this does not mean—and now I continue Rothman's argument—that science is *the* perfection of man as man. Science is the most perfected commonsense understanding, but it is not *the* perfection of man as man.[6] I come back to that later. Still less, of course, does it mean that every man should become a scientist or even get an elementary training of science. That follows in no way from that. All right. What we keep in mind, however, is the distinction between science and common sense without which the whole issue cannot be stated. And the difference between science and common sense shows itself most importantly for the social scientist in the fact that in positivistic social science there are no value judgments possible, whereas in commonsense knowledge value judgments cannot be thought away. Commonsense understanding is always in terms of understanding of values.

But there is a difficulty here in the attempt to establish a value-free social science, a point which I have made frequently. And I was glad to see that Nagel replied to it by making a distinction between legitimate value judgments, legitimate in the social sciences, and illegitimate ones by distinguishing between characterizing and appraising value judgments. I will illustrate it by one or two examples. It is impossible for any scholarly student of art, whether he is an art historian or sociologist of art or whatnot, to do his work without making a distinction between art and trash. Now this is of course a value judgment, and this implies, to mention only one corollary, that criticism, literary criticism as well as other criticism of other art, is a rational enterprise. In other words, not merely an expression of "I don't like this modern art," as Khrushchev and Eisenhower say.[ii] That is nice; I like that. But it is of course not criticism, because then you have to say a bit more than that. Now Nagel in fact admits that now, but he would also say, and that is the meaning, [that] from this characterizing value judgment, "This is art; this is trash," nothing follows for our action. It is as defensible to be utterly indifferent to art, and even to burn all works of art, as to take art seriously. That is what he means.

Now let us take an example somewhat closer home, the distinction between the statesman and the politician. That corresponds exactly to the distinction between art and trash. Now the politician, to give a crude example, is a man who says how we are going to win the next elections, period. And what do we do once we've won the election? Well, we prepare winning the election following. That's all there is to it. And it is clear that there are also men who are not merely concerned with winning an infinite series of elections but also with what they *do*, and if this is done on a certain level and with a certain ability, we speak of a statesman. That's not a

[ii] In his address at the dedication of the Eisenhower Presidential Library in Abilene, Kansas in 1962, Eisenhower questioned: "When we see movies and the stage, and books and periodicals using vulgarity, sensuality, indeed, downright filth, to sell their wares, you think that our spirit—do you say America has advanced as much as we have materially when we see our very art forms so changed that the works of Michelangelo and Leonardo da Vinci are scarcely spoken of in terms of a piece of canvas that looks like a broken down tin lizzie loaded with paint has been driven over it? Now what has happened to our concept of beauty and decency and morality?" *The New York Times*, May 2, 1962. Khrushchev famously visited the thirtieth anniversary of the Moscow Artist's Union in 1962, where he saw and criticized abstract paintings by Ernst Neizvestny and Eli Beliutin. The exhibition was subsequently closed.

definition of a statesman, only an indication that the distinction between statesman and politician is not absurd. But again, Nagel, I think, would now admit that; but he would say it is as defensible to be indifferent to all political matters as to be concerned with them because the latter would be appraising and taking a stand, and that is no longer possible for a scholar or scientist.

Still, let us look—I can be wholly uninterested in political and social matters, and that's my business. But on the other hand, whenever we speak of social science we presuppose that these are people who are concerned with society, just as it is hard to find a physician or a student of medicine who is not concerned with preserving health. So this practical function of preserving health in medicine belongs to medicine as an art, and in a similar way concern with society, with the decent order of society, belongs to the social scientist. If someone says, "I turn my back to social matters, I want to live as a beachcomber or a Bohemian"—I don't know what—that is surely all right to begin with, as defensible as any other noncriminal intention, but he surely is in the wrong place when he becomes a social scientist. Now if we make then this premise, we see that it is impossible as socially interested men to be indifferent to such things as juvenile delinquency, crime waves, corruption, or what have you. In other words, here these appraising value judgments—"that's a crime wave," "there and there is corruption"—become inevitably a guide to action not free from complication. For example,[7] in a given situation, to get rid of corruption may lead, because of a very broad corruption, to still greater social evils, and then you might say [it is better to] keep these corrupt politicians, they are [a] lesser evil than clean fanatics of a kind. A politically defensible view, but this is again all value judgments. What is better? What is worse? Now what is true of art and society is also true, of course, of science. It is absolutely necessary to distinguish between genuine science and spurious science, between a great scientific discovery and a minor trivial thing, of course—than between art and trash and so. But that one can also say, well, why should we not turn our back to science? I, as an individual, may have *n* reasons which are good. I may have to feed my starving family as a young man. You[8] sometimes find this condition: a man gifted for science will become a greengrocer for the rest of his days, and these kinds happen all the time and there may also be some of a more interesting nature.

But now let us see what the difficulty is. Here Rothman states the following thing—Cropsey had argued, on the basis of good old Aristotle, since man is most naturally defined in terms of reason, i.e., the rational animal, both his natural end and his excellence are to be defined in these terms. That's true. In other words, no one would say the excellence of man as man consists in tightrope dancing, although it is quite a remarkable achievement of which very few people are capable, but one wouldn't say it is, or it belongs to, the perfection of man as man. It is a perfection of which some men are capable, but it is somewhat marginal, whereas, for example, science would be closer to the center, to say the least. And I read to you Rothman's sequel. "Of course, most contemporary empiricists [that is another name for positivist—LS] would agree that it makes sense to characterize man (in contradistinction to other animals) by his ability to reason."[iii] Very well. So there is no disagreement there. It still makes sense to say man is a rational animal. But what is the difficulty? "A definition of man as a reasoning animal does not logically entail the assumption of one 'natural end' as against any other unless it can be demonstrated that it is *impossible* to say anything meaningful about man except in terms of the 'natural end' or standard which is accepted. (One can, for example, agree as to the uniqueness of the capacity to reason

[iii] Stanley Rothman, "Rejoinder to Cropsey," *American Political Science Review* 56 (1962): 684.

[meaning man is the only rational animal—LS] and argue for an aesthetic life or a life dedicated to the acquisition of power.)"[iv] I leave it at this quotation because this makes the argument somewhat more concrete.

Now the criterion which he uses, "it is impossible to say anything meaningful": there is nothing in the world on the basis of which you cannot say something meaningful. For example, you can say a lot of meaningful things on the basis of Hitler signs, of Marxism, or of psychoanalysis. Of course, meaningful it is. The question is whether it is true or whether it is comprehensive. This is a silly criterion, but[9] now let us see. Here he has this point; the concrete question is, while man is a rational animal, it does not follow that the cultivation of his theoretical reason, i.e. science, is the highest perfection of man. The acquisition of power, the striving for power, and the aesthetic life are equally legitimate choices. Now to begin with, why not? And this is of course a typical expression of that value-free science, because it treats all these goals as equal in rank. Do you see that? Acquisition of power, aesthetic life, the life dedicated to science are equal in dignity or rank. Yes, all right, one must surely investigate it; but I would ask this young man: Has he never heard that there have been people in the past who have really thought a bit about such things as desire for power, or however they called it, and seen whether it is really a worthwhile object for a man who knows what he is doing? And one doesn't even have to read, say, Cicero or Seneca or Aristotle; one simply has to have a little bit [of] experience and not forget in the classroom what one knows outside of the classroom.

Now look. Outside of the classroom when you see a man, say,[10] in a department of—what shall I take?—meteorology, in another country, of course—and there are a group, seventeen professors and assistant professors and lecturers, and then there is one fellow who wants to be chairman. [Laughter] Well, that is it. That's an example. Power: he only wants to have his hands in all possible pies. You may even find such people in this country. [Laughter] Now—and what is the reaction of a sensible and conscientious man to that? That is something petty. There may be a situation when one man and only one man can do this job best, and then whether he likes to do the job or does not like to do it, whether he enjoys bossing people around or detests it, as the sensible man would say, *he* should be the chairman. The mere interest in acquisition of power is something absolutely empty and petty, and therefore it is quite interesting, in former ages people didn't speak of this desire for power so much. They used another term, which also leads to difficulties but which indicates a somewhat broader and more human horizon, and that was the term "glory." No one ever said that Hannibal and Scipio wanted power. Perhaps they were not merely concerned and entirely concerned[11] [with] Carthage on the one hand, or[12] [with] Rome on the other. They wanted the great things to be done by them. But that selfish interest in entering they did characteristically not call power but glory, which meant immediately something like immortal glory. That could not be petty thoughts, because they thought beyond their own narrow lives. Power is a characteristically modern term, at least in this central position, and it became central through Hobbes and has very much to do with many other changes not altogether reasonable which go back to Hobbes.

So in other words, surely, say anything you want: say stamp collecting is as legitimate as to be a nuclear physicist. You can say anything. This is a free country. But the question is whether it makes sense on the basis of sufficient reflection, which reflection must of course include what

[iv] "Rejoinder to Cropsey," 684.

you yourself have seen with your own eyes, and not only that which you find in the *Journal of Abnormal Psychology*. Now similar considerations apply to the aesthetic life. What does that mean? To be surrounded with beautiful things, I take it, have all kinds of nice things, paintings and furniture. Well, we know that, and some people are very sensitive to that, that if there is something not beautiful in their environment—perhaps excluding their wives, which is not such a simple thing—then they are very unhappy. All right, one understands that one should be sensitive to beautiful things; but on the other hand, if you see someone, for example, like Spinoza—I saw Spinoza's room in the Hague some time [ago]: it was like a monk's cell, absolutely nothing at all. There was also nothing ugly, because if you have only the bare necessities, that cannot be ugly; and one can rightly say this is as reasonable a choice as the one where you have only art objects of the first order, and perhaps very expensive ones. Now this is of course a silly thing, to call this the aesthetic life. And what Rothman must mean is something like *l'art pour l'art*, art for art's sake, that is the highest.

That of course leads to a further question, meaning the enjoyment or the appreciation of art, or the production of art, which are two very different things. And one would have to open this very great issue that is a much more serious issue than the question of power, this issue which was called by Plato the quarrel between philosophy and poetry. The implication of this quarrel was that philosophy and poetry are both very high in the order of human things, and the question, the *question*, surely is which deserves the right of way. Both cannot be equally high. But by all means one should regard this as an open question and apply one's mind to it. But one should not merely say, "Look how many problems there are; let's give up": this is really not a rational reaction. I think the fact that he can put together power and aesthetic life is in itself highly revealing, and on the other hand in no way original. It is only a symptom of the key character of this value-free science. All values are equal in rank: whether[13] it is power or the aesthetic life, they are equally good examples. They are not equally good examples if one uses one's head and does not believe that these issues have not been [considered before present-day social science]—if one simply has a bit of education, if I may say so, and has read also things which are not mentioned in present-day social science periodicals but, for example, if one really takes[14] some time to read these books in which these questions of what a worthwhile human life is [are considered].

It is surely necessary to raise the question, Why science? Science admittedly cannot answer this evidently meaningful question regarding the place of science in the economy of human life. If it does not have a *necessary* place in that economy, as tightrope dancing does not have a necessary place, the choice of science is arbitrary. It is fundamentally as arbitrary as the development or nondevelopment of tightrope dancing. But if it has a necessary place, then you have an objective value judgment, meaning science is good, which doesn't mean that's the highest good but that it is a good, and this is of course impossible for the positivist to say. But if it does not have a necessary place, if it is not necessarily good, this has grave consequences which are not considered by the positivist. Science may be said to be *the* way to *the* truth. And this is what they say: Science is *the* way to *the* truth. But[15] they do not even elaborate this properly; one may prefer myths of a certain kind, preferably pleasant myths I suppose, to the truth. That is what it must mean. Yet nevertheless, science is *the* way to truth because myth is defined of course as untruth. You may prefer a certain kind of untruth to the truth. Why not? Many people do. So if this is a proof that this [is] legitimate, the proof is given.

The difficulty is this: science rests ultimately on premises, fundamental hypotheses, however you call them, not all of which are evident. They have the character of hypotheses, but of hypotheses which can never *cease* to be hypotheses, like the principle of causality. Perhaps not the principle of contradiction—this I think they all recognize, although the account which they give of it is not very clear. Surely the principle of causality has this character. As commonly understood, science cannot admit, for example, to take the simplest but in a way the most important example, it cannot admit miracles. No physicist or chemist or biologist is at any time permitted to say, when he is confronted with a wholly strange phenomenon[16]: This may be due to divine intervention. It is under no circumstances permitted. Now think, for example, [about] the question of the origin of the world. This has to be decided on purely natural grounds on the basis of the principle of causality as now interpreted. Even the question of the age of the earth: How old is the earth? Of course we have no certain knowledge, but the rough knowledge which is now claimed is based on the principle of causality, i.e., it is based on the deliberate exclusion of the possibility of divine creation. I mean, when you figure out, say, four billions of years, that implies of course four billions of years in a natural process. In a miraculous process, it could have been the matter of a split second. Purely theoretically, the traditional view, you know, according to which the earth, the creation is now less than six thousand years old, is of course absolutely defensible on this ground. I do not say that I hold this view, but we are now concerned with a theoretical difficulty. If the principle of causality as now understood is logically arbitrary, then it follows the possibility of miracles is therewith admitted. The possibility is admitted, and that of course has infinite consequences, whatever the value of this particular example may be because—that is clear—science cannot prove the impossibility of miracles without question-begging. That it can never do, and therefore it is always understood, *if* everything has happened naturally these things are substantially correct. But that they did happen naturally and must have happened naturally can no longer be proven. That is the essentially hypothetical character of this point of view.

It follows then that science, which includes of course also all results of science, is the choice of one worldview among a variety of some. We may leave it at that, say, omnipotent creator versus no omnipotent creator, but there are of course many other varieties. Science is based on the arbitrary choice of one worldview among many. The only thing nonarbitrary from this point of view is the fact that we must choose—that is undeniable—[17]or we commit suicide. But we must choose. The fundamental phenomenon is the abyss of freedom. It's the only nonarbitrary phenomenon. Now this is the thesis of existentialism today, and I can only say up to this point existentialism or historicism[18] is superior to positivism because it faces a difficulty which positivism does not face. Now this was a repetition of things I have said in the previous meetings, but I thought it would be necessary, because if we have not a certain understanding, common understanding, it is of no use that I continue. I will make now a brief pause before I go on with my—yes?

Student: I would like to raise a question that . . . What do you think of the argument put forth by some that—

LS: By whom?

Same Student: By some . . . compared the social scientists to the physician and so forth. These people would make a distinction between the social scientist and what they would call the social engineer—

LS: Yes. Yes, sure.

Same Student: . . . who would be concerned with the values . . .

LS: In other words, physician to biologist equal to social engineer to social scientist.

Same Student: Yes.

LS: Sure, all right, but the appraising judgments would still remain. The appraising value judgments in Nagel's sense would be unaffected by it. [19]Would the issue come [up] in the case of a *purely* theoretical social science which rigorously abstains from any policy recommendations? Try to find such a social scientist, but they claim that there should be some. But one could rightly say [that] one should be nice and friendly. Let us assume that there are such social scientists. Still the same question would rise, the fundamental question, namely[20], why science? Why purely theoretically science and the truths going with it? Is this *the* way to *the* truth, or is it not *a* way to a truth defined in a certain manner? This difficulty would remain.[21] I mean, this difficulty puts a limit to the claims of this science, and especially to the social science connected with it, still would remain the same. Yes?

Student: I don't see how a positivist establishes in any way the existence of causality, because it seems to that they don't operate on causes but on conditions.

LS: Same thing.

Same Student: Well, no, I don't—

LS: All right. Then they say if these and these conditions are given, this and this happens.[22] They try to get rid of the so-called metaphysical element in causality and replace causality by something approaching a mathematical function. You know? $y=f(x)$. You know that? $y=f(x)$ would of course not be understood by anyone as a *causal* relation. Do you see that? It is a relation of dependence, but not a causal one. Now if it were possible to understand all natural phenomena in terms of mathematical functions, you would have gotten rid of causality and everything would be fine. In fact, science tries to approach that but doesn't achieve it, and the way in which it approaches it is by replacing in its stricter language "causes" by "conditions." But the fundamental problem remains the same, because you say again: If these and these conditions are fulfilled, this and this happens. Ya? How can you know that this will be, that even given the same conditions in the future, the *same* conditions, something else may not follow? How can you know that? The premise is, given these conditions, this happens, "quote" and with blinking of the eyes "necessarily." Yes, "necessarily." Where do you get that necessity? That's the question. Empirically it can never be established. Empirically you can only say[23]: When these and these conditions were fulfilled, this and this happened. But when the scientist says, "If the conditions change, there will be other consequences," however you call it, that is no difficulty.

But the point is, the specific question is: How can you be certain that if the conditions are identical, the effect will be identical? That's the issue.[24] Do you *know* it? And the positivist must say: I do not know it. That's the basic assumption of my science. Mill, in a less sophisticated age, called it "the postulate of the uniformity of nature."[v] Postulate. Postulate, that is something like, "*If* I want to have science, I must assume it." But it is not intrinsically necessary. That's the difficulty.

Student: Seems to me it's definitely deeper than a difficulty, because if you operate only on what in strict language you would call a condition, as the window is the condition of the sun coming in the room, then you could say—

LS: The heat, the heat of the sun, not the sun. Let's be scientific.

Same Student: Then you can say nothing about science leading to *the* truth, because you don't know what follows from what. You know that given this set of circumstances, [25]this set of circumstances has hitherto followed, but this isn't proof. This is a simple observation . . . mathematically.

LS: Yes, but still it seems one would say that[26] the uncontested experience of all times and ages has shown, for example, that all human beings, with perhaps a very few exceptions, are either clearly males or clearly females.[27] And we act on it.[28] Most people don't have a *theory* about it, but they take it as a fact all the time, and[29] I believe no one has ever made any mistake by following your uncontested experience.[30] So that is fine; that is in a way what Aristotle says.[31] But[32]someone also says,[33] someone had said around 1600: It is the uncontested experience of all times that the sun rises in the east and sets in the west and the earth is stable.[34] And then there came a man called Copernicus and the long series of which you hear in all history of science courses, if not in science itself. So what? So this shows the so-called uncontested experience of all times and places is not necessarily true. Do you see that?

Same Student: Well, it seems to that you talk about the uncontested experience in order to verify your scientific postulated causality, that you're saying—

LS: No, they are not so illogical. I mean, they say: We cannot establish the principle of causality; we operate on the basis of it. You see, that is a long story which I cannot possibly develop. It has something to do with a man called David Hume, who in the eighteenth century wrote what he regarded a demonstration that the principle of causality is not a rational principle,[vi] as everyone had assumed before him, at least disregarding some skeptics. But all—Hobbes, Aristotle, anyone—had assumed that the principle of causality is rationally evident. Hume questioned it; and then Hume received a reply by Kant. These are, in a way, the most important facts in modern intellectual history. And Kant tried to show in a *modified* manner that causality is *the* rational principle, but limiting its authority in order to preserve freedom. So he made a distinction between the phenomenal world and the true world. The principle of causality in the ordinary understanding is absolutely *the* rational principle for the phenomenal world, but does not extend beyond it. That is a very crude but not misleading statement. And now the logical positivists are

[v] John Stuart Mill, *A System of Logic* (1843).
[vi] David Hume, *An Inquiry Concerning Human Understanding* (1748).

in between Hume and Kant. They accept Hume's criticism of causality, but they make this objection. They usually are not very clear in their criticisms of Hume, because that is a kind of sacred cow where one must not say too much, [35]a kind of respect, reverence. But what they mean is this—it comes out indirectly: Hume's criticism of causality—Hume's doctrine of causality, rather, is a psychological doctrine, i.e., it explains the genesis of the sense of causality by virtue of which we say, whenever we see a corpse: Who did it? That has no necessity in itself, but we are all so conditioned that when we see a corpse we say: Who did it? And they rightly say this psychological genesis does not explain the validity[36]. This distinction between genesis and validity they learned from Kant and his successors. This they also don't say, but it is true, and therefore their doctrine is then the principle of causality is *the* basic hypothesis. That's its logical status. How sense of causality arises psychologically is of no interest to the theory of science; that is a psychological problem. That is roughly the position they take.

Now let me continue. You want to say something?

Student: I wanted to ask you to restate your position . . .

LS: I would say that I never saw a necessity to make any use of this distinction. I mean, I never saw any necessity. As I see it—I never see any necessity for it. That's all I can say. What these people *mean* by it, i.e., the thinking people among them, for example, Max Weber, I think would have to be rephrased very radically to correspond to what man's study of human affairs does. That one must not be a partisan is an absolutely necessary demand for any scholar as scholar or scientist as scientist. But nonpartisanship is not the same as impartiality. That is one point I'm going to make. An impartial judge does not take sides, and yet he says: This man did wrong, this man did not wrong, and so on. Impartiality is not neutrality. That's the word. Value-free social science is neutral. And this is not possible, it seems to me. But impartial it must be.

I can state my criticism of the present-day social science in this country as follows, not of every individual exactly—you know there are varieties—but in principle. It claims to be neutral. In fact, it is partisan, whereas it should not be neutral but impartial, and which impartiality[37] includes value judgments. It is impossible to speak of human things, [to] repeat this old story again, without making value judgments. That there are questions which arise. You see, Max Weber did not think of such lousy phenomena which these people—you see, you must not, in all when people speak about political and moral matters, you have to look not merely at what they look, at whether the argument is so-called logical, but you must also look at the premises. Every man of normal intelligence can avoid faulty syllogisms. Ya? Therefore people poke fun at logic sometimes when they tell us that the conclusion—what is a good example? Every dog is bird; and all birds mew; hence every dog mews. It's a perfectly wonderful syllogism, and absolutely nonsensical because of the absurdity of the premises. The more interesting thing are the premises. Now, how do we get our premises? Everyone knows ultimately, one can say, from experience. I mean, you only have to say: What kind of experience?

Now I have read a book once by one of these people—the name is not important; he is really also not very famous, otherwise I would mention [it]—and this man's modern horizon was characterized by the following fact. One key thing of which he knew as something despicable, or more than despicable, was Hitler and what he stood for. That's very common.[38] But that was not

interesting . . . the second point was a question which has worried him very much, and I must say I hate to infer this was autobiography, the case of straight-laced Catholic landlady,[39]a straightlaced and nasty landlady versus a kind girl of loose morals.[40] And he couldn't make up his mind theoretically. Practically, that was fine. Look,[41] when he takes two human beings who are in different ways very imperfect,[42] then it is frequently a matter of touch and go, and depending on all kinds of other considerations, which you should in a given case prefer. But what struck me was[43] that he regards that circumstance[44] [as what] describes his moral horizon. Such a man, I would say, is as incompetent in social or moral science, however you call it, as someone who can barely count ten fingers as a mathematician. I'm sorry, that is what I mean. And of course there are people who have much more moral delicacy, even among the positivists. I have no doubt about that. They only have no theoretical right to use it. That's their trouble. Or they believe they don't have it. Now you see the question is then, is always, in all interesting cases, not inferences—because that can be avoided with a reasonable amount of care by everyone, and[45] [one] doesn't[46] commit fallacies, common logical fallacies—but the question is the poverty or richness of the premises. If you have very poor premises, where you omit the most interesting things, well, you can be as logical as you want, your theory will be a poor theory, even if everything follows clearly.

Now let me see, the interesting examples from which Weber started, who was after all a man of a different caliber, was this. For example, France [and] Germany. He raises the question [about[47] what] the German professors of his time, most of them nationalists, said: German culture is of course superior to French culture. And he loathes these people, because you know he thought this is a very narrow thing, because there are many things in France that the French are superior to the Germans. I would, by the way, fully agree with him at this point. But what follows from that? That such questions aren't simply not reasonable questions, but the utmost you can do is to say what are the excellences of German culture, and what are the excellences of French culture. Whether you side with Germany or you side with France is a matter of your temperament, upbringing, what have you. That is not a serious question. This is theoretically not a serious question. Or[48]—it's [a] famous fact—the controversy about the Reformation. [The] Catholic version, the Protestant version. Now while the rage of the sixteenth and seventeenth centuries has gone, the fundamental cleavage still exists. The Catholics still, if I am familiar enough with the controversy, say this, that there are gross misuses in the Catholic Church, and so Luther's action is in a way excusable, but these misuses did not justify the separation from the Church. And the Protestants on the other hand would say the misuses were symptoms of a basic defect, and therefore they justified the break from the Church. How can a man be—I mean, how is an *impartial* decision possible? The problem surely exists, but I would say by its very terms it is not rationally decidable because it is a question concerning the meaning of divine revelation, which by its definition transcends the boundaries of reason.

These difficulties, which are genuine difficulties, were always known and do not affect our issue at all. But compare these two issues I gave to you—Protestantism/Catholicism, France/Germany. Or take another more limited question: the Germans and French have warred almost since they exist, since 1843, so to speak.[49] How is it possible to reach a just judgment regarding one particular war, since every end of a preceding war, however just it may have been, surely implied some injustice to the other side, some use of mere violence, stronger against weaker? How can you really judge simply, say, the Germany, the aggressor throughout the ages, as Mr. Van

Sittert[vii] wrote during the Second World War? Because you can say with equal right, if you are a German propagandist: "France, the aggressor throughout the ages." I mean, this is simply below the level of serious discussion. That is political propaganda, which one may enjoy in the heat of war but which has no place in academic life. In this aspect, Max Weber I think was perfectly right. But compare only these issues with the issue of the landlady and the girl to see a broad human horizon and a pitifully narrow horizon; and I would say that if you have not shown by deed that you have a reasonably large horizon, you are not morally entitled to speak. By this I do not question this First Amendment, because legally we must permit many vices but still we must also admit that they are vices. So. *Dixi*. *Dixi*, Latin, means "I have spoken."

So now I must turn to the issue of historicism. We still have time. Now the point which I made is this: that[50] for the understanding of the issue is important [to see] that there are two kinds of historicism, which I call theoretical historicism and radical historicism. According to theoretical historicism, the historian stands outside the historical process. He looks at it from the outside. According to the radical historicism, there is no place outside: the historian belongs to the historical process. In different terms, the theoretical historicist admits historical objectivity: you can find out *the* truth about the Civil War, about the difference between Plato and Aristotle, about Homer, or what have you. The radical historicist says: You cannot speak here simply of *the* truth; each age has its historiography.[51] That I must try to explain. There was someone, one of you in my office today who raised the question regarding the point which I couldn't take up profitably at this point. A youngish, young man with glasses. Oh, yes. What was your question regarding this point?

Student: Yes, as a theoretical historicist seems to exempt himself from the criticism that if everything is historically . . .

LS: I see.

Same Student: . . . the theory itself is historical—

LS: Yes, but on the other hand, one can also [say][52] on this level that the radical historicist, by asserting that everything is historical, *including* my own view, nevertheless, by saying everything is historical says something which in a way transcends history. So I think, looking at it quite from the outside and without entering into any details, both positions are difficult to maintain.

Student: What about theoretical historicism?

LS: That's what you said. How can he exempt himself? Why should historical knowledge of all kinds of knowledge be the one which transcends history? You see, now let me explain that.[53] The theoretical historicist would say this: All values, all ideals, all notions of right, but also all systems of science, all theoretical categories, are historically variable. There is no objectivity there. The ideal of the fourth century is necessarily different and incompatible with the ideal of a later century, and so on and so forth. And the same is true of the theoretical systems, and our

[vii] It is not clear who Strauss refers to here. F. J. C. Hearnshaw's *Germany, The Agressor Throughout the Ages* was published in 1940 (London: W. & R. Chambers, 1940).

modern scientific system, *scientific* system, is as *dated* in principle as Babylonian astronomy.[54][It is still recognized today, of course.] But that doesn't mean that it is *the* true theoretical system. But what it does say is this: that this *x*—let us call it "history"—which is *productive*, the historical process, which is *productive* of these values, these ideals, these notions of right, these theoretical systems—this can be contemplated in itself, and this is the substance, which remains the same.

Now let me first continue a bit here. I would like to say a word about Marxism in this connection, because Marxism is somehow in between[55] in the following way. There is no transhistorical position, according to Marx, i.e., you belong to the proletariat, to the bourgeoisie, to the feudal nobility, petty bourgeois, what have you, today or in the past. But there is historical objectivity crucial for them; there is no relativism here. I mean, the position relative to the proletariat is *the* objectively true position, which will never cease to be true, which will never become obsolete. In other words, there is a privileged historical position, and for convenience's sake I will call it the absolute position. One of the historically many positions is the absolute position. I mean, I know the qualifications which Marx[56] makes, but in the decisive respect it is of course dogmatic, as people say, namely,[57] no one knows what will happen in the realm of freedom. And Marx called this—you know, the historical process—only the prehistory, compared with the true history which begins after the victory of communism. But this moment where the character of all prehistory, i.e., of what we call history, has been realized, and therefore the outlines of the final state, communism[58], and how communism comes about have been seen, is of course *the* critical moment in human thought. Here you have—you overlook the whole past and you see clearly the outlines of the future in the most important respect: Communist world society. So there is an absolute moment, the moment in which the most fundamental historical change becomes possible and necessary.

Now furthermore, Marx knows that the moving thing[s] in all historical change are the relations of production; and connected with that, the class struggle, the distinction between the infrastructure and suprastructure. These are all final insights into the character of history. The most recent American Marxist statement is a book by Morton Auerbach, *The Conservative Illusion* (Columbia Press, 1959). This is of course not quite orthodox Marxism because he admits that men will never achieve complete social harmony. I mean, there is characteristically[59] a certain injection of Freud. He's always in present-day American social thought, as those who may come to Marx and vice versa. He[viii] phrases this very simply: history is the real test of ideology, i.e., which ideology is right or wrong is history in the sense that it can *explain* history. And only Marxism can understand, can give an account of [how] historically changes actually happened. His particular subject is conservativism, of which he admits that it is strictly speaking connected with Edmund Burke or post-Burkean, i.e., strictly speaking, we cannot speak of conservativism prior to Burke, with which I entirely agree. And yet according to him *the* classic of conservatism is Plato, which is not good historical method. I say this only by the way. And as a book on conservatism, in his definition, it stands and falls of course by his interpretation of Plato. If Plato is *the* classic of conservativism, I can only assert that his interpretation of Plato is most inadequate; it is given in ten pages and there is not a single thing in it which is either new or true. I mean, either he deviates from the textbook version or is surely wrong. But I'm not interested in this particular book; the failure is typical. Marxism asserts that it understands all

[viii] That is, Auerbach.

doctrines better than they understood themselves. For example, what Rousseau thought about his world is wrong because Rousseau did not see the relativity of his doctrine to prerevolutionary petty bourgeoisie in Geneva, let me say.[60] But Marxism never takes the trouble of understanding the doctrines as meant. The only exception I know is sometimes Marx in his analysis of economic doctrines—sometimes there are very good remarks there. I knew a German author, Mehring, he is wholly unknown in this country, I suppose, who made some solid studies on German literature in the eighteenth century,[ix] but as a rule they do not take the suprastructure seriously. In other words, their claim to theoretical historical objectivity is not fulfilled. This much only in passing.

Now I take as an example of a theoretical historicist the famous Swiss historian, Jacob Burckhardt. His book, with a German title, *Weltgeschichte über Trachtungen*, *Reflections on the History of the World*,[x] we may say is one of the most outstanding documents of historical reflection in the nineteenth century. Now Burckhardt asserts the superiority of the historical consciousness. It is universal. For example, only now do we know and understand the dramatic poetry of all times and countries. In earlier times, people knew perhaps the dramatic poetry of their own country, and maybe Greek and Roman. But now Hindu, Chinese, what have you: all dramatic poetries of all time. True universality. We have better theoretical knowledge of what was good in all dramatic poetry and why it was good. An essential ingredient of that universal historical knowledge is this, that it knows that every human phenomenon belongs to its epoch. So in other words, when you have a Japanese drama, you see it in its connection with Japan and do not merely look at it as a work of art which you enjoy or do not enjoy. We are the first to judge the individual with a view to his precedents, to his time. We understand him historically; say, we see Plato as a Greek and not simply as a sage in general. In other words, historical understanding is genetic understanding, if genetic understanding of a certain kind; and this implies, however, that historical understanding understands the essential limitations of every human phenomenon. "Ideals do not live eternally." Every ideal has its time. Ideals change, the human mind changes. That means that ideals are not the highest—they are produced and decay—but the process which produces the ideals, the historical process [is the highest]. Philosophy is—that Burckhardt does no longer say, but that is the inevitable consequence—philosophy is the understanding of the historical process and nothing else; not, for example, of nature, because nature becomes known quasi- by natural science which is an activity of the human mind and historically relative. Philosophy is the understanding of the historical process, of the constants in it, of the recurrent and typical. Philosophy is the contemplation of historicity. Now the basis is the change of ideals. This does not mean that *the* ideal, whatever it may be, is replaced by pseudo-ideals. This of course was always admitted, that this would happen. No, there is not *the* true ideal. No cause, no cause whatever deserves complete and final victory. Every cause, however noble, is defective, and therefore if it perishes it deserves to perish.

There is another consideration. A variety of causes is essential for vitality, for life. Without a variety of causes there would be death. And this variety is exactly the characteristic of Europe according to Burckhardt, and the unqualified superiority of Europe is due to the fact that it has and has, in a way, always possessed a variety of ideals, a variety of causes. You see that

[ix] Franz Mehring, *Die Lessing Legende* (1893).
[x] Published in English in 1943.

Burckhardt is an old-fashioned liberal, an old-fashioned liberal for good and ill, but of course not yet a relativist because he naturally distinguished between high and low, good and bad.

There is then no absolutely valid ideal or cause. Here we come across a conflict between theory and practice, because as acting men we must take sides, we must dedicate ourselves to a cause. This could mean that the theoretical man as theoretical man, where we do not take sides but look dispassionately at all causes, [is freer]. We are freer [as theoretical men] than as practical men. In a way, Burckhardt admits it. But he denies that the point of view from which man is freer, man is better or higher because man owes his worth to dedication, to the dedication to a cause, to a specific ideal. All changes and causes are perishable, but in spite of all changes of ideals or causes, man can always dedicate himself to a cause, a noble cause, one among many, and this dedication makes him morally respectable. Man reaches his height only through dedication to a controversial cause, through struggle. The danger to man is uniformity of cause, i.e., security. Burckhardt was an old reactionary who opposed the egalitarian socialist movement of the nineteenth century with all his power. He belonged to the patriciate of his Swiss city of Basel, and therefore this egalitarian socialist movement is not a cause strictly speaking, because it is fundamentally based on egoism, on the service of egoism, not of dedication. And the only hope in the face of the egalitarian socialist movement is nationalism and particularism. This is what he occasionally said.

But we are here concerned only with the theoretical question. What becomes of theory, of theory in the widest sense, of science, on this basis? And that means, in Burckhardt's case: What becomes of history? The historian cannot be a partisan: he knows that every cause is defective. Yet he cannot be objective. He cannot be objective. You see, he makes here a criticism of the ordinary view, because there cannot be objectivity regarding the selection of objects. The objects which a historian chooses, and[61] no historian can be a universal historian, literally understood, studying the history of the human race from the very beginning up to now from the point of view of religion, economics, politics. That animal doesn't exist. So he must make a selection. The selection cannot have an objective principle, and therefore historical research is fundamentally of qualified objectivity. History, as he puts it, is in every case a report of one age about what it finds remarkable in another age. So when Burckhardt wrote a book on the age of the Renaissance [or] Constantine the Great, that is a report of a nineteenth-century European liberal of very high education about the Renaissance [or about] Constantine the Great. A mid-twentieth century American, say of liberal persuasion in the present-day sense, would write two entirely different books. It is impossible to say: This report is true and the other is untrue. You can only say—well, there are certain external criteria of competence; they are uninteresting. But where the books differ you cannot say: This is *the* true account and the other is the untrue.

Now let me state the difficulty somewhat more precisely. Nineteenth-century history is universal history in a way in which no history before was universal, because it does not only intend to deal with all peoples and cultures but in every respect: it is political history, cultural history, economic history, history of art, and what have you. We have better knowledge than men of the past of what is good in the old dramatic poetry and why, Burckhardt says. But—and now comes the crucial point—this enormous theoretical progress is accompanied by the vulgarization of taste, by the victory of mass taste. The high cultures were, so to speak, narrow. Our lack of narrowness, our intellectual freedom, is degrading. Look at the many styles with which we are

familiar and especially look what they did in the last quarter of the nineteenth century, especially, when they tried to restore all the styles, preferably in a single post office or bank. So the many styles make impossible the great severe style which is characteristic of all high epochs. More simply stated, the universalism of history which is the great theoretical progress is bad for culture, bad for life. The universal history avails itself of the possibility inherent in reason to stand above all causes and cultures: [it] looks down at them theoretically. This neutrality ruins wholehearted dedication. A man who stands above all these causes and who has become impregnated with a sense of the essential defectiveness of any cause can no longer wholeheartedly dedicate himself to any cause. The universalism of history is morally ruinous, ruinous to life.

The second point. Is universalism compatible, at least, with good history? So in other words, if this is as history by far superior to what was done in the past, one could perhaps say this would compensate us for its defects. But we have seen that Burckhardt admits the subjectivity of history due to subjectivity of selection. All history is relative to a specific standpoint, to a specific time. It is not truly above all times. It is not truly objective. So we do not even get from it what it promised, to say nothing of the things which it didn't promise and which it gives.

Now the third point. The historian is not bound to any cause. He is a relativist, to use a word which came up after Burckhardt. But Burckhardt makes the distinction—Burckhardt in contradistinction to the present-day relativist—between causes or ideals proper and mere egoism, hedonism, utilitarianism. These are no causes, because[62] egoism is simple egoism and the other positions deal with man only as an egoistic being, fundamentally. What makes man respectable is dedication, i.e., something transcending egoism. We may call this position a formal ethics. There is a principle of excellence, in Burckhardt's case dedication, which does not have any specific content. For example, it is indifferent to the distinction between monogamy and polygamy, to the difference between divine right of kings and republicanism, and any other substantive cause, because you can be dedicated, as history shows, to any of these causes.

Now this formal ethics, then, relativizes all substantive ethics, all principles of high culture, because a high culture is never merely dedication but dedication to something. A high culture necessarily absolutizes itself. This famous complaint that the Greeks called the non-Greeks barbarians; and similar distinctions are made by the Chinese, and I suppose also by the Hindus, and everywhere, the absolutization of itself: that was always so in the past. Since historical consciousness mediatizes all cultures preceding the historical consciousness, if we want a high culture again we need a *new* high culture, a high culture of an entirely different character than all previous cultures, because it presupposes the historical consciousness. This does by no means come out in Burckhardt himself, but it is somewhere in the margin. Now the reason is this: while Burckhardt's original, fundamental conceptions were of course his own, having come from his long and important historical studies, there suddenly appeared a young professor, thirty years younger than he, I believe, who revered Burckhardt but who because of his particular qualities came to exercise some influence on Burckhardt: and that was Nietzsche. He came as professor to Basel around 1869. Now it is one of Nietzsche's early writings, called "Of the Advantages and Disadvantages of History," in the book *Meditations Out of Season*, which I have to consider and which marks the conscious transition from theoretical historicism to radical historicism.

I have to say a few words about that. Few points will be repeated from what I said about Burckhardt, not because I think Nietzsche has learned these things from Burckhardt but the other way around. Now Nietzsche starts roughly as follows. He accepts science, especially Darwin, and history as a matter of course. Natural and historical evolution are *the* fundamental fact. This is *the* truth. And now comes Nietzsche's peculiar assertion: These are truths, but deadly truths. We cannot live on the basis of them. They dissolve everything of any value. The simplest answer would be this. Since high human life, and that means for this people always a high culture, is not possible on that basis, then we must turn our back to the truth. We must fabricate myths. There are certain occasional points when Nietzsche seems to say that, but he never means this seriously, because the fabrication of myths would be in the first place ineffectual, and the fabricated myths don't have the power of grown myths. But the main point from Nietzsche's point of view is this. The fabrication of myths is incompatible with intellectual probity, with honesty. Therefore Nietzsche is compelled to question the truth of the alleged truths which are deadly.

Now how can he do that? His whole lifework was devoted to this. Now I speak here only of his first attempt, because that is of crucial importance for the understanding of the problem of history. Nietzsche says in the work, the scientific objective historian does not understand the historical phenomena. Of course he can find out that X was born on that day and always wore this kind of guise and wig or whatever it may be. He does not understand the *core* of the historical phenomenon. Because the scientific objective historian is not committed to any cause, he cannot empathetically enter into people committed to a cause. He can only see the outside, really, not the life of the people. Even if I may take an example which is very adequate, although not adequate in every respect: there are people who are historians of philosophy who do not philosophize. I would say they cannot understand the history of philosophy. They can write textbooks, all kinds of things, but they cannot of course understand, because without philosophizing one cannot understand any philosopher. You could also—if one is not musical, one cannot be a student of the history of music, of sociology of music, and so on. So the scientific[ally] objective historian simply is a bad historian. In order to understand history, one must be committed to a cause. But to *a* cause. Every commitment is a *specific* commitment. There cannot be a commitment to *the* true, *the* good, *the* beautiful, but it will always be to a *specific* true—truth, a *specific* good, a *specific* beautiful. And therefore a universal history is impossible, because that commitment, that specific commitment excludes quite a few things, a very large sphere of things, from the sphere of genuine interest. Universal history claims to be objective history. It has a perfectly open horizon in every respect. But a closed horizon is required for stability of standards, for a stable image of man, for what the Germans call *Bildung*, for the formation of a man with a view to a certain standard.

Now I have spoken before about the transition of positivism to historicism. Modern natural science is based on a logically arbitrary premise. It is not *the* perfection of the natural understanding. It is based on an act of the will, on a decision. Now what Nietzsche says is that *all* thought rests ultimately on a decision, i.e., on a *specific* decision, on a specific project as it came to be called in our century, on an act which forms a horizon, which limits our horizon, which forms a horizon *within* which knowledge is possible. With a perfectly open horizon, i.e., if you do not have any fundamental and stable premises, knowledge is impossible. Implied is: there are no absolute facts, as positivism in one way or the other assumes, and not only positivism but also

the whole tradition. All so-called facts are already *interpreted* in the light of specific premises which cannot be questioned—what Collingwood called "absolute presuppositions"—say, Chinese, modern European, or what have you. All so-called facts are already interpreted in the light of a comprehensive view which antedates every possible understanding of any fact. It is impossible to transcend these presuppositions, to analyze them objectively, for they are the premises of all analysis. A Marxist or any other interpretation, or idea of history interpretation, all comes too late because it has already made certain premises which it cannot question. There are conditions of all possible history; for example, heaven above us, earth, man, beasts of various kinds, sure. Who can deny that? But, it is asserted, they can never be seen except historically, i.e., in a historically definite manner, on the basis of specific absolute presuppositions. Heaven, earth, and man are seen and understood differently in different cultures, in different epochs.

But someone could say: Is there not something called reason which is common to all men, and is this not the truly fundamental presupposition of everything, which is not affected by history in any way, the so-called principles of logic? To which the argument is this: What is reason? Reason, that we know; that goes back to something in Latin called *ratio* and which is the translation of the Greek word called *logos*, from which the word logic is obviously derived. A *Greek* understanding of man leads to something like logic. That this Greek understanding has been accepted by the whole West, to some extent now by all men in the world, does not deprive it of its Greekness, fundamental Greekness, because this migration, as it were, means also a modification. So the medieval or Cicero's *ratio* is not exactly the same as *logos*; and the *ratio* of Thomas Aquinas is not the same as Cicero's *ratio*, and Descartes's *ratio* still less, and so on. The principle of contradiction, to take the most famous and clear example—that it is impossible to say that A is B and A is non-B, they cannot both be true at the same time—is not simply logical but is in the first place, as they say, a metaphysical or ontological principle, an assertion defensible on the basis on Aristotle, surely. The principle of contradiction does not deal with judgments primarily, but with being. Yet with being understood in a specific manner, namely, in the Greek manner.

Now follow this argument. If even the principle of contradiction adequately understood proves to be historical, what else can claim to be transhistorical? Now this leads to the form in which this radical historicism presents itself in our day. There was—everyone has always known of a connection between thought and language. Thought is universal—that was always assumed, common to man as man—but language is necessarily this or that language. There is no universal language. In a way modern science, modern mathematics tried, at least in the days of Leibniz, to find a universal language, a purely symbolic language. I mean something much more important than Esperanto and this other kind of thing, but it has something in common with that. This language of symbolic logic is too formal and necessarily derivative. This cannot be the solution. The only alternative to it, to symbolic logic, i.e., to logical positivism, is historicism on the basis of the assertion of the connection between thought and language.

Now I must illustrate this a bit. The basis of logic—that science which seems most remote from all history and historical change—the basis of logic proves to be the Greek understanding of being. But why do you say the Greek understanding? *The* understanding. To which it is said: No, that is not *the* understanding, and one can prove this very simply. I know only one other language apart from Greek, Latin, and Indo-Germanic language[s], and that is Hebrew—

Hebrew, biblical Hebrew. Now biblical Hebrew does not have a word for being. I mean, I know that there is this famous passage in Exodus which is translated as "I am who I am," but this is already a Latin translation of a Hebrew expression which is not quite literally, correctly translated this way. The proof of it is this—the same is also true of Arabic by the way; the Semitic languages do not have such a word it seems[63]: they tried to understand Aristotle in the Middle Ages when he was translated; they had to coin a special technical term for being, whereas the Greeks had it by nature, so to say, by the nature of their language. So if there is not even a word for being, one can then say there is no understanding of being as being. One can also give other examples. One of them will be very necessary for us later, since we deal with natural right: there is also no Old Testament word for "nature." If someone speaks of "nature psalms," for example, he speaks very improperly, although for colloquial purposes it does not do any harm. There is not even a biblical, an Old Testament word for "world," I contend, such a word without which we think thinking is impossible. The very notion of science, the universe, the world, this is not necessarily a notion present to the human mind.

Now[64] [on] the basis of this and similar considerations, we reach this conclusion. Either we say the Greek language or the Greek understanding embodied in the Greek language is *the* language, the absolute language—as sometimes people in former times said the Hebrew language is *the* language, which no one would dare to say—or historicism. That seems to be the situation. I would like to say one word before I discuss this issue more fully. I regret that I have to devote part of next time to this introduction still. I would like to mention only whatever may be the truth about historicism—and I myself do not believe in it; I make this clear, and I will try to state my reasons—but it truly had one healthy effect which positivism cannot be said to have had. It leads—I mean, the historicism on its highest level, of course, not on the level of popular pamphlets—historicism on its highest level makes it impossible for us take any longer for granted certain things which had been taken for granted for many centuries and which by thinking men should not be taken for granted. All these questions must be reopened. In this sense historicism is a helper toward intellectual freedom, something which one cannot say even in the most charitable mood of positivism.

Now did I make myself clear? You see in what is common now in the Anglo-Saxon world especially, what is most potent in the philosophy departments is a controversy between two philosophies of language. The connection between thought and language is taken to be *the* key, and then the question of course is . . . so we have [this], *the* fundamental understanding is the understanding of language. The question is: What does it mean? And one school, in this country more powerful I believe amongst these people, is *the* language, the language of science. And against this there was apparently a healthy outburst of common sense,[65] because it would become impossible, for example, to say, "England has declared a war against Germany," because England, what does this mean? A certain individual whom they call the foreign secretary gave a piece of paper which they call a declaration of war to an individual called the German ambassador, and thereupon all kinds of movements began, of U-boats and other [things]. Of course it makes sense to talk of England and Germany; I entirely agree with these people. But they are called the ordinary language people. But the ordinary language people, it seems to me, have not considered the implication, because ordinary language is always this or that language. And therefore if an Englishman writes a philosophic book from this point of view, he must be aware of the fact that this is emphatically English, and it would have to be translated not merely

in the ordinary sense in which a textbook of arithmetic can be translated, but it would have to be rewritten radically to be meaningful, say, to an Italian or to anyone else. I would say that as far as I can judge, the choice between positivism and historicism is, on the basis of present-day thought—please, *only* on the basis of present-day thought—inevitable, and I think the case for historicism would be stronger. This is, and I think precisely because both positions are for various reasons unsatisfactory, I think this will induce us to become interested in alternatives. Now of course there are *n* alternatives, and that of which I will speak, natural right, is only one alternative prior to investigation. Someone could say: Why not Zen Buddhism? Without investigation, indeed why not? I hope this is understood, that one cannot reject anything which one has not examined. But I think we can guardedly find some reasons.

Now although it is a bit later, I shall be glad to have a brief question period because I am very concerned with being understood. And if I am not understood, I would be grateful if you would tell me what I said either unintelligibly or wrongly or improperly. Mr. Erickson?

Student: How would the ordinary language school deal with the problem that ordinary language would presuppose a horizon . . . translate ordinary English into ordinary French, into ordinary Chinese, which presupposes a horizon . . . which all languages are translatable. And this horizon is a metalanguage because we are talking above language—

LS: It is a what language?

Same Student: Metalanguage; you are talking above language, you are dealing with the . . .

LS: But as a metalanguage it should not be in any ordinary language.

Same Student: But it is not ordinary. It is a metalanguage.

LS: Sure, I mean, that is a strong point of the symbolic logicians. But we have here an expert. Mr. Morrison, what is the answer of the ordinary language people to this difficulty? That an analysis of any ordinary language, English or whatnot, necessarily transcends the ordinary language because in a way it deals with all languages and this can no longer be ordinary language, how do they deal with that? Mr. Erickson, can you turn around so that Mr.—

Mr. Morrison: We talk about translating from ordinary English into ordinary French, and even into ordinary Chinese, that you presuppose that they are intertranslatable, and this presupposes a metalanguage, which is not ordinary language but is philosophical . . .

Student: Why it is necessary to do this . . .

LS: Well, on a practical level that may be all right, but the fundamental difficulty, I believe, is this. If thought is essentially language-bound, and language is always this or that language, then you can in strict speech only speak of English thought, French though, Chinese thought, and so on. How is it possible to speak—to think as a human being, i.e., transcending all these national . . . or the variety, that is the question. The old solution was of course this: that the relation between thought and language is not as strict as these people now assume, because a

mere language, the words are conventional. The thoughts which are meant by the words, for example, chair, chair instead of *Stuhl* in German, this is absolutely conventional, uninteresting, because the German who speaks of *Stuhl* and the Englishman who speaks of chair mean exactly the same thing. So, you know, the verbal formulation is contingent. The notion is not contingent.

Mr. Morrison: . . . get beyond language . . . translation is impossible.

LS: But the question is whether that is true in important cases. You know the philosophic tradition, agreeing in this respect with positivism, believed that all human thoughts of importance are translatable. No one in the Middle Ages doubted that the translation of Aristotle into Latin or Arabic or Hebrew is, in all respects which are important, perfectly as good as Aristotle himself. That was assumed. And positivism, I would say, assumes the same thing. In other words, if you have to do some violence to a native language in order to bring out, say, an Aristotelian term, that is all right. If the thought is sufficiently important, do violence to your language! Introduce a foreign term. I mean, purism of this nature is unreasonable. And they would say, there is—there cannot be in the nature of their universal language, because whether you say "boo" or "wah" for [a] given elementary emotion, that does not make any difference. You can toss your coin. But you know this is essentially conventional, as they formerly said, but the notions are not. The notions indicated by the sound pattern are not contingent. That was the traditional view.

Mr. Morrison: . . . There is no satisfactory translation of Plato and I cannot imagine . . .

LS: Well, you cannot . . . I would grant this, that only a man who is almost as gifted as a writer or poet as Plato could produce in any other language a decent translation of any Platonic work. But as far the nonpoetic qualities are concerned—ya, the nonpoetic qualities, say, the philosophic thought—I believe a perfect translation is possible.

Mr. Morrison: . . .

LS: Sure, that is clear, there are many defensible practical reasons for translation, which are theoretically questionable, but practically sufficient. That would not interest me.

Mr. Morrison: . . .

LS: Ya, sure.

Mr. Morrison: . . .

LS: [66]Let me only say this point. I do not quite see with what right one can say in effect [that] the only proper task for philosophy is the analysis of language, unless thought is identified for all practical purposes with languages. And since there is not *the* language but a variety of languages, you are in the midst of historicism. This is my difference. I probably would have to study this gentleman, which I have not done. I hope you will do it.

Mr. Morrison: . . .

LS: Even that would not quite help, because in a purely empirical study of this kind you would arrive at the conclusion that if you know all the available languages, then it would seem there are only these and these ways of understanding, some of them of course incompatible with one another (they do not all have the same categorial systems), disregarding the question of the extinct languages, which is not entirely irrelevant for purely empirical study, it is still . . . [From] what I have heard from linguists, their attempts to find their genuine laws were not very successful. In other words, [67]if you have, say, *n* elements composing and you have, say, in English the combination of 1 to 10 and in other languages 1_1 to 10_1, and so on and so on,[68] they have never succeeded in showing that there is a *necessity* of combining 1, 2, 3, and so on, and 1_1 with 2_1, and so on. I leave it at this. I must leave it at this. Is there any point someone would raise? Mr. Butterworth?

Mr. Butterworth: . . .

LS: Ya, but not . . . It is not so. Aristotle did not imply—Aristotle knew probably only Greek. Ya? Aristotle probably knew only the Greek language. And all these great men, as far as one can see, knew at most a few barbaric words used by foreign slaves,[69] [and] did not take it seriously; it was just gibberish. They practically knew only one language.[70] [You can find that] grammar is a kind of reflection of the true order of things. For example, if you say, let us assume every sentence has formally the structure "A is B." Subject and predicate.[71] There is a grammatical subject anyway. This somehow *reflects* that all thinking is attributing some qualities, in the widest sense of the word, to some thing. Now grammatically of course the quality can be the subject. You can say, "Green is a color."[72] You can do that. To that extent, grammar reflects only the fundamental logic; and [73]you can as it were *ascend* from grammar to that. But it is not *the* necessary key. *Logos* is not language. I mean, that is a mistake which one is always likely to make. *Logos* is speech, and while speech is of course impossible without language,[74] the essential elements of speech are the notions in whatever language expressed. Simply stated, that *logos* came to be translated by reason is not an accident. There can only be one reason. There are, there can be an infinite variety of good and bad *uses* of reason; that goes without saying. But there can be only one reason. But there are necessarily *n* languages; there is not *the* language. This is a fundamental fact from which Aristotle started, and therefore he was interested in *logos* and not in *glossa*. *Glossa* is the Greek word for language: tongue, as we still say, the English tongue. That is what Aristotle studies. In modern times—I mean, I am not informed about these Englishmen, Mr. Morrison, only what I occasionally heard; I hope you will inform me better, much better than I am.

Now what I have observed on the Continent more than in England is this. Since the end of the eighteenth century, when the whole tradition, including the tradition of modern science, was for the first time question[ed]—this is to say partly as a consequence of Rousseau—there began a philosophic interest in language. That today there are people who write or speak of a philosophy of language, that is a new thing. I mean, there were certain reflections on language in the Middle Ages, but this level became a key fact, and this is connected with historicism, i.e., with the view that certain differences among men, historical differences, whether in terms of simultaneous cultures or succeeding epochs, that the historical variety was regarded as much more revealing than what is common to man as man. In connection with this, language *had* to become a central subject. And what I have in mind, and I may be wrong in ascribing it completely or partly to

these Englishmen, is this: there is not *the* system of categories, as Kant would have put it, but these categories have a different sense, are different in different cultures, in different epochs. And[75] this peculiar interpretation or understanding of the categorial system is that which constitutes the essence of any language. And if you cannot get out of that, if we cannot get out of a somewhat modified Greek understanding, at least as long as we think theoretically, then our thought is necessarily historical, a specifical *Western* understanding. And this is in itself in no way affected [by the fact] that there are today many people in Asia and Africa and elsewhere who think in our modern scientist's way, for example, modern historians,[76] because one can rightly say they have become Westernized. As modern scientists, they think no longer along Chinese or Hindu terms; they think fundamentally along Western terms. This was always admitted as a possibility, except by very narrow racialists, of course, that a man can turn as it were from one culture to another.

Now next time I would like to continue this for some time and show first the prima facie evidence which historicism has today. I did not have to do the same thing for positivism because everyone knows what its prima facie evidence is, namely, the enormous successes of natural science, but in the case of historicism I believe it is necessary, and then to add a few critical remarks.

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[1] Deleted "I have to come"
[2] Deleted "in."
[3] Deleted "in."
[4] Deleted "To."
[5] Deleted "And from this--."
[6] Deleted "because man has."
[7] Deleted "it may be,".
[8] Deleted "know, often,".
[9] Deleted "I do not want to—."
[10] Deleted "take."
[11] Deleted ", in."
[12] Deleted "in."
[13] Deleted "that's power or whether it is—whether."
[14] Deleted "out."
[15] Deleted "they imply—."
[16] Deleted "—to say."
[17] Deleted "I mean,".
[18] Deleted "is perfectly—."
[19] Deleted "It would be—where does the issue—."
[20] Deleted "regarding the question."
[21] Deleted "It would surely…"
[22] Deleted "Yeah? This is—t."
[23] Deleted ""he is a tool."
[24] Deleted "How can you?"
[25] Deleted "that."
[26] Deleted "if something has—."
[27] Deleted "Yeah?"
[28] Deleted "Yeah? Surely. And we have no… "
[29] Deleted "I think."
[30] Deleted "But let us—."
[31] Deleted "Yeah?"
[32] Deleted "when you think—."
[33] Deleted "well, the uncontested experience—."

[34] Deleted “Yeah?.”
[35] Deleted “you know?—.”
[36] Deleted “, the validity.”
[37] Deleted “is also not—which.”
[38] Deleted “The second point… “
[39] Deleted “versus …”
[40] Deleted “Yeah?”
[41] Deleted “look.”
[42] Deleted “—yeah?—.”
[43] Deleted “the matter.”
[44] Deleted “—that.”
[45] Deleted “it.”
[46] Deleted “make—.”
[47] Deleted “which is.”
[48] Deleted “whether.”
[49] Deleted “Yeah?”
[50] Deleted “there is a— ”
[51] Deleted “Now in order to—.”
[52] Deleted “that the radical—I mean.”
[53] Deleted “You have, I mean.”
[54] Deleted “meaning, it will still—recognized today. That of course.”
[55] Deleted “, in between.”
[56] Deleted “says.”
[57] Deleted “whatever—”
[58] Deleted “, have.”
[59] Deleted “, there is.”
[60] Deleted “Yeah?”
[61] Deleted “every historian—I mean,”
[62] Deleted “they are either—.”
[63] Deleted “And therefore when.”
[64] Deleted “from.”
[65] Deleted “which would,”
[66] Deleted “Still, I would say this. I mean, we cannot—.”
[67] Deleted “that you have”
[68] Deleted “it has not—.”
[69] Deleted “yeah?—and looked at,”
[70] Deleted “And, yeah, but it is not… you can find what is it, what.”
[71] Deleted “Yeah, but it is—.”
[72] Deleted “Yeah?.”
[73] Deleted “it is.”
[74] Deleted “but.”
[75] Deleted “this is,”
[76] Deleted “is of course no proof.”

Session 4: October 17, 1962

Leo Strauss: [In progress] —[1]I think really you should have read Cicero, especially the sections where he speaks about natural law, and Hooker and Thomas Aquinas.[2]

Student: Will you be lecturing on anyone besides Cicero and Aquinas? Will you be lecturing on Plato and Aristotle?

LS: Ya, sure. Oh yes, worst of . . . they cannot be avoided.

I would like if I can to finish today my introduction which I hoped to have finished a week ago, but it is not entirely subject to my control. I spoke first of positivism and turned then to historicism where I made a distinction between theoretical and radical historicism. The argument leading from theoretical to radical historicism is briefly this. Theoretical historicism seems to exempt itself arbitrarily from the general historicity of all other human thought. Science, values, ideas are essentially historical, but the historical understanding of them is not essentially historical. It is above history. And radical historicism does away with it and subjects the historical knowledge itself to historicity. That is the first point. The second point which led to the transition is the conflict between history as a theoretical pursuit and life. I might add one point. I think I spoke of Nietzsche last time as the most important thinker regarding this transition. And what Nietzsche did was taken up and in many ways radicalized by a contemporary German thinker whose name most or some of you at any rate have heard: Heidegger. They are the most important representatives of what I call radical historicism. But I repeat again the reference to Collingwood as the clearest English-speaking representative of this view.

Now let us first look for one moment at the evidence which historicism seems to have. The highest theoretical authority generally admitted today is science. But science, to the extent to which it tries to understand itself, to the extent to which it develops a theory or philosophy of science, understands itself historically, and I gave you as an example the statements of Nagel. That is what I mean generally by saying that positivism turns into historicism. Differently stated, the traditional understanding of science, which is no longer prevalent but underlying somehow, is based on a specific understanding of *being* according to which being means to be *present*, to be ready at hand. From this it follows that being in the highest sense is to be *always* present, to be always. Such notions as eternal matter, eternal laws of nature, reflect this understanding of being. But science as we know it now knows of nothing which is always. There is a certain atom of some sort at the beginning, but of course that is a finite process leading from an atom to us, and to an end state. There is nothing eternal or sempiternal; hence of course there can also not be sempiternal principles of right. Nothing is eternal, and in particular of course *man* is not eternal. Man being that being which raises questions, there cannot be any eternal questions, properly speaking, because the being which can raise questions is not eternal. These are things today fairly generally—I mean, they are in the air.

The second consideration. Science is somehow derivative from common sense, from a primary prescientific understanding. But if we look at common sense, we see that there is an infinite

variety of common sens*es*. The common sense of the South Sea islander is different from the common sense of a Norman Englishman, or a Chinese, or whatever have you. Since there is such an infinite variety of common senses, there will also be no natural right. There will be an infinite variety of notions of right reflected in an infinite variety of notions of *natural* right in our Western tradition. *Natural* right is a specific view of right, a view belonging to a specific culture, the Greek culture and its heirs.

A third consideration. Let us practice the command of self-knowledge. Let us look at what we are doing here in this course. We start we start from positivism, historicism, i.e., we start from the present situation. And this was done at all times, that men started from the present situation. That might be concealed by certain formalisms, but in fact[3] [4][man, thinking man], precisely if he is thinking, will always start from the present situation. Now each present situation differs from every other present situation. All thought belongs to a specific time. We today start, if we are thoughtful, from the crisis of our time, from the crisis of modernity, which is obviously a specific historical situation. Starting from that specific situation we understand, say, Aristotle naturally differently than Aristotle understood himself, because Aristotle did not start from the crisis of modernity. Or take another example. When you read Ernest Barker's solid introduction to his good translation of Aristotle's *Politics* and you have a bit of experience, you will say: Well, this is definitely a Victorian understanding of Aristotle. And when you look at Thomas Aquinas's commentary, you will say, with some justice: That is a medieval understanding of Aristotle. The mere fact that we see Aristotle today, and we cannot help seeing Aristotle today, in contrast also to present-day social science positivism makes our Aristotle different from Aristotle himself, from the Victorian Aristotle, the medieval Aristotle, and so on and so on.

These are very rough suggestions as to the plausibility of the historicist assertion today. More generally stated, there is an infinite variety of perspectives; and every historical phenomenon, great or small, is seen in such an infinite variety. Shakespeare as understood or played today is not the Shakespeare as understood and played in his lifetime or at the time of Garrick or whatever have you. There is an infinite variety of perspectives, and none can be said to be *the* true perspective. I know that you have heard of this view in your college education. But I believe you have—most of you have heard of it as a matter of course, and you have not been made sufficiently aware that this is a very *special* view, which is of course questionable.

I would like now to submit to you a few objections to this view. Now I would say of myself that I agree with historicism regarding the necessity of *historical* studies on philosophic grounds. This for one reason or the other is today inevitable; and the simple proof of the necessity of this is the sterility of the so-called nonhistorical philosophy today. If someone writes a book on theory of political obligations today or whatever have you—a so-called systematic study—without historical knowledge, without historical reflection, it is sterile. How this happens, we may not know, but the fact I believe is undeniable. And the people who speak relevantly always show today this historical reflection. But I disagree with historicism regarding its interpretation of that necessity, of that quasi-fusion of philosophy and history. I would say that the fusion of philosophy and history is today indeed necessary, but what is the meaning of today's necessity? Does this constitute a progress, as historicism asserts? Or is it only a dire necessity? I cannot develop this question. I have sketched the argument in an essay called "Political Philosophy and

History," which appears in the collection *What is Political Philosophy?*[i] Very briefly, it seems to me that the necessity of history, of a fusion of philosophy and history, arises as a consequence of the essentially derivative character of the modern concepts. If the concepts are not essentially derivative, as they were in classical times, the necessity of historical studies does not arise. To understand what Aristotle and Plato mean by *polis* no one had to engage in a history of the term *polis*, to say nothing of etymology. If we try to understand the equivalent today, the state, the meaning of that term is unintelligible except through historical studies. [5]

There is however no question as to the necessity of historical studies on philosophic grounds today, but there is a great difficulty regarding the "why" of these studies and their "how." Now historicism—the study as conducted ordinarily by historicism has the character of a *genetic* study in two ways. In the first, the genesis of a thought out of a particular world. For example, historicists would take it for granted that you cannot understand Machiavelli, except if you see him against the background of the Renaissance. Now, that our concept of the Renaissance is partly derivative from our readings of Machiavelli, and is at any rate something of the utmost vagueness compared with what we can read in Machiavelli himself, is not considered. So that is one. Of course, Plato can only be understood as a *Greek*. And so on and so on. So the genesis of the thought out of the particular world. And secondly, the genesis of the particular work. For example, Aristotle's *Politics* must be understood as having been due to a development of Aristotle's thought which can be traced in the *Politics*. Plato's thought must be understood to have developed, and if there are any differences between the *Laws* and the the *Republic*, well, this was the old Plato in the *Laws*, a man who had become disappointed by his experiences in Syracuse and therefore he lowered his sights, whereas when he wrote the *Republic* he was young and foolish and had all kinds of [illusions]. In other words, the difficulties you encounter in reading an author are explained strictly speaking by chance events and not on rational grounds. But even if one abandons the common versions and vices of historicism, one does not yet abandon historicism proper, because the fundamental issue is this: historicism denies the possibility of what is traditionally called objectivity, of historical objectivity. That means of understanding, say, Machiavelli or Plato or whoever it may be exactly as he understood himself. Historicism asserts that this is impossible. Our Aristotle must be different from Aristotle's Aristotle, from Thomas Aquinas's Aristotle, and so on. Understanding is necessarily, even on the highest and most conscientious level, understanding differently.

Now let us consider this proposition for one moment. This view was stated with the greatest force and clarity by Heidegger. Now Heidegger asserts that all earlier philosophers were blind to *the* question or to *the* phenomenon. It would be useless to go into the question of what he regarded as *the* phenomenon. This would need at least an hour, which I don't have. Therefore, he necessarily claims that he understands the thinkers of the past better than they understood themselves, because they thought on the basis of a premise of which they were unaware and of which Heidegger has become aware. So it is not an understanding differently, but an understanding *better*, i.e., he does the same thing that all philosophers to speak of have done. They thought they understood the thinker of the past on the basis of *their* philosophic premises, and therefore better than the thinkers of the past understood themselves. In other words, understanding differently is an impossible position, for the following reason, too: How can one know that one understands, say, Plato differently than Plato understood himself if one does not

[i] *What Is Political Philosophy? and Other Studies* (University of Chicago Press, 1988), 56-77.

know how Plato understood himself? So this demand of historical objectivity, i.e., to understand a thinker exactly as he understood himself, cannot be denied without contradicting oneself. Surely, to understand a thinker exactly as he understood himself is not sufficient; it is also necessary to find out whether what he thought was true. But how can you find out whether what he thought is true if you do not know first what he thought?

So I think the simplest criterion for seeing the inadequacy of historicism is the phenomenon of historical understanding if seriously practiced. If I wish merely to rewrite the past from the point of view of the present problems, something as a book, etc., a report of an age about another age, then it is of course relative to that age. But this is not our primary concern. Our primary concern is not, for example, what did Plato contribute to *our* way of thinking, which for most people is sufficient, but the first is: What did Plato himself mean? Perhaps his contribution to the tradition is the least important part of his teaching. How can we know that prior to an examination? But of Heidegger one must say this, that he in a way transcends historicism, to the extent that he asserts that there is *the* fundamental question: *the* fundamental question, which can never cease to be the fundamental question even if it is forgotten. Yet, and here is where historicism comes in, this fundamental question was never raised hitherto and it could not have been raised hitherto. This means *the* fundamental question belongs indeed to our time. But since our time is the first which can become aware of the fundamental question, our time is a privileged time or the absolute time. The other side is there are no eternal questions; there are no questions which can be raised at all times. This then is the specifically historicist view in a full development. Not only do the answers differ from culture to culture, from epoch to epoch, and hence in particular the notions of right or the ideals change from epoch to epoch and culture to culture, but even the *questions* change. For if the questions did not change, man as man, as a question-raising being, would transcend historical change. And we would be back at what I called theoretical historicism.

Let me explain this. I turn now to Collingwood. Collingwood's position is less sophisticated, much less sophisticated than that of Heidegger, but it has the great advantage of having been expressed in the English tongue, so you can hear it directly. Now Collingwood does not deny the possibility of historical objectivity. To that extent, he seems to belong to the older version of historicism, which I called theoretical historicism. Let me read to you. Now what is his specific assertion? I read to you from his *Autobiography*, and this deals of course with his own life, i.e., with his own professors in Oxford, men who are probably today forgotten. I do not know. Some may still be alive, which would not contradict the first assertion. Now what does he say?

"[These people with whom I took issue—LS] thought that Plato, Aristotle, the Stoics, the Schoolmen,[ii] and so on had all asked themselves the same set of questions, and had given different answers to them. For example, they thought that the same problems which are discussed in modern ethical theory were discussed in Plato's *Republic* and Aristotle's *Ethics*; and that it was a man's work to ask himself whether Aristotle or Kant was right on the points over which they differed concerning the nature of duty.

"In a quite different sense of the word, the 'realists' [these, his antagonists—LS] certainly thought that philosophy has a history [in spite of that non-historical permanent character of the questions—LS]. The different answers which various philosophers have given to the eternal

[ii] Strauss omits "the Epicureans" and "the Cartesians" from Collingwood's list.

questions of philosophy have been given, of course, in a certain order and at various dates; and the 'history' of philosophy is the study by which people ascertain what answers have been given to these questions, in what order, and at what dates. In that sense, the question, 'what was Aristotle's theory of duty?' would be an 'historical' question. And it would be wholly separate from the philosophic question, 'was it true?' Thus the 'history' of philosophy was an inquiry which had nothing to do with the question whether Plato's theory of Ideas (for example) was true or false, but only with the question what it was."[iii]

"So there are two characteristic assertions which Collingwood attacks: (a) that there are eternal problems; and (b) that the question of what a doctrine is can be treated in entire separation from the question of whether it is true. Now his criticism. First, regarding the eternal problems:

"Was it really true, I asked myself, that the problems of philosophy were, even in the loosest sense of that word, eternal? Was it really true that different philosophies were different attempts to answer the same questions? I soon discovered that it was not true; it was merely a vulgar error, consequent on a kind of historical myopia which, deceived by superficial resemblances, failed to detect profound differences.

"The first point at which I saw a perfectly clear gleam of daylight was in political theory. Take Plato's *Republic* and Hobbes's *Leviathan*, so far as they are concerned with politics. Obviously the political theories they set forth are not the same. But do they represent two different theories of the same thing? Can you say that the *Republic* gives one account of 'the nature of the State' and the *Leviathan* another? No; because Plato's 'State' is the Greek *polis*, and Hobbes's is the absolutist State of the seventeenth century. The 'realist' answer [I mean his opponents' answer—LS] is easy: certainly, Plato's State is different from Hobbes's, but they are both States; so the theories are theories of the State. Indeed, what did you mean by calling both political, if not that they were theories of the same thing?

"It was obvious to me that this was only a piece of logical bluff, and that instead of logic-chopping you got down to brass tacks and called for definitions of the 'State' as Plato conceived it and as Hobbes conceived it, you would find that the difference between them were not superficial but went down to essentials. You can call the two things the same if you insist; but if you do, you must admit that the thing has got *diablement changé en route* [has enormously changed on its way—LS], so that the 'nature of the State' in Plato's time was generally different from the 'nature of the State' in Hobbes's. I do not mean the empirical nature of the State; I mean the ideal nature of the State. What even the best and wisest of souls who are engaged in politics are trying to do has altered. Plato's *Republic* is an attempt at a theory of one thing; Hobbes's *Leviathan* an attempt at a theory of something else.

"There is, of course, a connexion between these two things; but it is not the kind of connexion that [these other fellows—LS][iv] thought it was. Anybody would admit that Plato's *Republic* and Hobbes's *Leviathan* are about two things which are in one way the same thing and in another way different. That is not in dispute. What is in dispute is the kind of sameness and the kind of

[iii] R. G. Collingwood, *An Autobiography* (Oxford: Oxford University Press, 1939), 59.
[iv] In original: "the realists"

difference. [These other people—LS][v] thought that the sameness was the sameness of a 'universal' [in other words, state is subdivided into city-state, territorial state, and so on and so on—LS], and the difference the difference between two instances of that universal. But this is not so. The sameness is the sameness of an historical process, and the difference is the difference between one thing which in the course of that process has turned into something else, and the other thing into which it has turned. Plato's *polis* and Hobbes's absolutist State are related by a traceable historical process, whereby one has turned into the other; any one who ignores that process, denies the difference between them, and argues that where Plato's political theory contradicts Hobbes one of them must be wrong, is saying the thing that is not [i.e., is lying, meaning Plato's *question* was an entirely different one from that of Hobbes and therefore they cannot be a genuine contradiction—LS].

"Pursuing this line of inquiry, I soon realized that the history of political theory is not the history of different answers given to one and the same question, but the history of a problem more or less constantly changing, whose solution was changing with the change of the problem.[vi] The 'form of the polis' is not, as Plato seems to have thought, the one and only ideal of human society possible to intelligent men. It is not something eternally laid up in heaven and eternally envisaged, as the goal of the efforts by all good statesmen of whatever age and country. It was the ideal of human society as that ideal was conceived by the Greeks of Plato's own time. By the time of Hobbes, people had changed their minds not only about what was possible in the way of social organization, but about what was desirable. Their ideals were different. And consequently the political philosophers whose business it was to give a reasoned statement of these ideals had a different task before them [i.e., the function of the political philosopher is not to discover the truth but to give a reasoned statement of the ideals of the society—LS] . . .

"The clue, once found, was easily applied elsewhere. It was not difficult to see that just as the Greek *polis* could not be legitimately translated by the modern word 'State', except with the warning that the two things are in various essential ways different, and a statement of what these differences are; so, in ethics, a Greek word like *dei* cannot be legitimately translated by using the word 'ought' [which is a convenient translation—LS], if that words carries with it a notion of what is sometimes called 'moral obligation' [because the Greek word does not carry that connotation—LS]. Was there any Greek word or phrase to express that notion? The 'realists' said there was; but they stultified themselves by adding that the 'theories of moral obligation' expounded by Greek writers differed from modern theories such as Kant's about the same thing. How did they know that the Greek and the Kantian theories were about the same thing? Oh, because *dei* (or whatever word it was) is the Greek for 'ought'."[vii]

In other words, the identity is created by destruction of the Greek thought, by an inadequate translation. Here I think he is perfectly right.

Now let us see what the key assertion of Collingwood is. The question of truth does not[6] ultimately arise. In a subordinate manner, of course [it does]; but if Plato succeeded in rendering adequately the Greek ideal, this Greek ideal can no longer be criticized. You can oppose another

[v] In original: "The 'realists'"
[vi] In original: "changing with it."
[vii] *Autobiography*, 60-62.

ideal to it, but not rationally but only on the ground that it is the ideal of your society. But this does not correspond to facts, because Hobbes, the example mentioned, claimed that he had *refuted* Plato. Was this mere rationalization on the [part][7] of Hobbes, a mere error? It may have been bad reasoning; I believe it was, but reasoning surely it was. On the other hand, the truth of what Collingwood has said, part of what he asserts, is undeniable. One cannot understand Plato and Aristotle in terms of the state or the concept of state. That must lead to gross misunderstandings. The only possible translation as a mere translation is of course "city." But I grant that is not very helpful, because it is unintelligible. The "city," when you mention the city of New York, everyone knows Wall Street or something like that. So that is not intelligible; you have to explain it. You have to dig long enough until you find modern equivalents to the city. These equivalents will not be identical, and then you have to show the difference between that equivalent and the city. Indicated very briefly, the modern equivalent of city is the country: "Right or wrong, my country," and such things. "The country is in danger." But here it of course becomes intelligible why did the Greeks think in terms of *city* and not of country. Why was this so emphatically urban, whereas the modern notion reminds us of course primarily of the nonurban? These are very important questions. But to that extent Collingwood is right that the *belief* that it is in each case possible to find directly and without any thought the modern equivalent of say Greek thought is very bad dogmatism.

Now let me read you another passage. Well, I won't read it; I wish only to say that in certain casual utterances it appears that Collingwood was doubtful whether historical objectivity is possible. He should have been doubtful of it because given his premises, there cannot be strictly historical objectivity, i.e., an account, say, of Plato which is *the* true account for all ages and cultures. I will omit that because it is not very important. But I must read you another passage:

"It became clear to me [he says—LS] that metaphysics . . . is no futile attempt at knowing what lies beyond the limits of experience, but is primarily at any given time an attempt to discover what the people of that time believe about the world's general nature [metaphysics, in other words, is the attempt to make clear the *Weltanschauung* of a given culture or a given epoch—LS]; such beliefs being the presuppositions of all their 'physics', that is, the inquiries into its detail. Secondarily, it is the attempt to discover the corresponding presuppositions of other peoples and other times, and to follow the historical process by which one set of presuppositions has turned into another . . .

"[It is not the business of the philosopher or the metaphysician—LS] to raise the further question whether, among the various beliefs on this subject that various people hold and have held, this one or that one is true. This question, when raised, would always be found, as it has always been found, unanswerable . . ." [viii]

He calls therefore these presuppositions absolute presuppositions. So in other words, what he asserted is this. What he exemplified first by political theory is true of all philosophy. No philosophy can transcend its epoch or culture. The utmost it can do is to spell out what the premises of this age or epoch or culture are. The question of the truth of these premises cannot be raised. This is the reason why he calls them *absolute* presuppositions, something beyond which you cannot possibly go because it is the premise, the highest premise of all your analytical or

[viii] *Autobiography*, 65-66.

descriptive work you might do. But there is this difficulty: What about this insight itself, that we arrive ultimately at absolute presuppositions which are not intrinsically evident but which are only evident for the culture or epoch in question? What about this? Is this theory belonging to a particular culture or epoch, or is this not true of *all* epochs and cultures, regardless of whether all cultures or epochs could have understood it, but as a matter of fact? I would say this assertion, that there is a variety of absolute presuppositions in the sense defined, is *the* absolute presupposition; and this absolute presupposition is not mere presupposition, but it is demonstrated by all kinds of reflections, historical reflections being a part of that. This is *true*, whereas no other absolute presupposition can be true. Is this point clear? The historicist insight as such, that all thought depends ultimately on uncriticizable and unevident *Weltanschauung* or presupposition, [is] that this is not unevident but evident according to this view. There is then *the* true perspective, the perspective of the man who is aware of this variety of absolute presuppositions; and it would be *the* basis of course from which he would try to understand Plato, Aristotle, Hobbes, or whatever it may be, i.e., to find out both what, say, Plato teaches and at the same time whether it is true. In fact, of course, the question whether it is true would not seriously arise because his historicist conviction assures him in advance that Plato must be wrong in the decisive respect. He may have made all kinds of nice remarks of secondary interest, but in the fundamental point, in his metaphysical doctrine, he must be wrong because he was not a historicist.

Now this much about this point. And now we come to the other question: Is it possible to separate the historical question, "What was so and so's theory and such and such a matter?" and the philosophical question, "Was he right?"

"[T]he alleged distinction between the historical question and the philosophical must be false, because it presupposes the permanence of the philosophic problems. If there were a permanent problem P, we could ask 'what did Kant, Leibniz, or Berkeley think about P?' and if that question could be answered, we could then go on to ask 'was Kant, or Leibniz, or Berkeley, right in what he thought about P?' But what is thought to be a permanent problem P is really a number of transitory problems, *p1*, *p2*, *p3* . . . [ix] whose individual peculiarities are blurred by the historical myopia of the person who lumps them together under the one name [capital] P . . . [What then do we have to do? And he says—LS]:

"We have to begin, as poor devils of historians begin, from the other end. We have to study documents and interpret them. We have to say, 'here is a passage of Leibniz; what is it about? what is the problem with which it deals?' Perhaps we label that problem [small] *p14*. Then comes the question 'Does Leibniz here deal with *p14* rightly or wrongly?' The answer to this is not quite so simple as [Collingwood's opponents—LS][x] think. If Leibniz when he wrote this passage was so confused in his mind as to make a complete mess of the job of solving his problem [and that is of course what the average philosophy historian does all the time—LS], he was bound at the same time to mix up his own tracks so completely that no reader could see quite clearly what his problem had been. For one and the same passage states the solution and serves as evidence of what the problem was. The fact that we can identify his problem is proof

[ix] While reading, Strauss distinguishes the capital P of "problem" from the "small p's" of the transitory problems." Ellipses are in the original.
[x] In original: "the 'realists'"

that he has solved it; for we only know what the problem was by arguing back from the solution."[xi]

There are no permanent problems, and we cannot know the problem except by arguing back from the solution. I believe that is simply empirically wrong, as Collingwood who was in a way a practiced historian should have known. It may not be so in all cases. For example, if you are confronted with fortifications, you have only the solution, this fortification, and then you have to argue back: What was the problem they tried to solve by this kind of fortification? That was what Collingwood is quite good at. He was also an archaeologist, a British archaeologist. But that of course never happens as to the history of human thought; surely not the history of philosophic thought, because in the history of philosophic thought the philosophers also always make clear what their problem is. And you look up—I do not say Aristotle, but Plato. He or someone in the dialogues identifies the problem. For example, *Laches*: What is courage, manliness? However you want to translate that, that is the problem. That the Greeks understood perhaps under courage something slightly different in some ways from the way we understand it we can know only by reading Plato and see[ing] whether Plato subsumes under "courage" things which we would not subsume, and vice versa. I would say in agreement with Collingwood that the separation of history of political philosophy from political philosophy itself is impossible, but not for the reason which he gives but for a more practical reason. One cannot understand a great political thinker properly if one does not have an incentive for studying him as a political philosopher, i.e., if one is not interested in the substantive problem or problems of political philosophy, if we do not suspect that we may have to learn something for our own political understanding from studying, say, Plato, Hobbes, or whoever he may be.

To come back to one particular point which was raised by Collingwood, the question of *polis* and state. That is surely a most important question, but what does the question mean? Ultimately, which of these two concepts is more adequate for understanding political phenomena? As Collingwood admits in the case of Plato, Plato asserted at least by indication, and so did Aristotle, that *polis* is *the* best form of human living together. This claim must be faced. Aristotle and Plato may be wrong. But we must then show the reasons, and in order to show the reasons why he is wrong, we must first have understood *his* reasons and not assume that as a Greek he was as a matter of course sold on the *polis*, as if there had not been at their doorsteps the Persian empire on the one hand, and the tribes in the north, which were not *poleis* in any sense. And if he was not compelled to think about that, the two concepts of, say, *polis* and state (or take any other example) cannot simply coexist, the Greek here, the modern here, in such a way as we today, however, are compelled to think in terms of state, whereas the Greeks were compelled to think in terms of the *polis*. I would say this on the basis of Collingwood: modern historicism according to its claim has discovered *the* absolute presupposition, namely, the variety of equally true absolute presuppositions. This insight belongs to the twentieth century, to a certain kind of life which understands itself necessarily, among other things, in terms of the state. Since the understanding in terms of the state is wedded to *the* fundamental truth, the understanding in terms of the state would be the true understanding; and the consequence would be that you would have to rewrite the whole *polis* story in terms of the state. Everyone today would say the true equivalent of *polis*, it seems to me on the academic level at any rate, is such a thing as culture or civilization. Everyone takes it for granted today that we must understand other peoples in terms of cultures or

[xi] *Autobiography*, 69-70.

civilizations; that is exactly the question. But from the historicist point of view, this is inevitable. Historicism implies, we may also state it as follows, that the meaning of every term is determined by a system, by the culture, the civilization, as a whole. That is to say more immediately, by the language system to which the term belongs. "Lion" means something different in Arabic, in Greek, in Chinese, in English. But is this true? Is there not a meaning which is the same for everyone? And what is true of the lion is also true of the earth, for example. The earth, heaven. The earth may be deified, but it is still the earth which is deified. The core meaning remains the same. What is true of lion, earth, heaven, and so on, is true of course also and above all of man, is a core meaning which is not affected. But this question, "What is man?" is the core question of philosophy, and from this point of view one can very well say that there are problems coeval with man as man.

This does not mean of course—and here Collingwood is absolutely right—that these permanent and fundamental questions are raised, and raised in an adequate manner at all times. Some times may simply have sunk, gone down from the highest level of philosophic reflection and waste themselves as it were in the discussion of secondary and derivative questions. One might say perhaps the school prevalent today, like positivism, has forgotten the fundamental questions and is completely consumed in the discussion of secondary or tertiary questions. So that there are permanent questions does not mean, as these vulgar historians of philosophy mean, that these permanent questions are raised at all times and by all philosophers. If they assert that, Collingwood is absolutely right. In other words, the permanent and fundamental questions must be properly identified. They are not necessarily known in the proper way to every human being, or even to every professor of philosophy.

Let me explain it by one example, and then I am through with this part of the argument. Someone writes a book—I happen to have come across this book title, but I could have taken *n* other titles—on Thomas Aquinas's aesthetics. That's a simple example. Here Collingwood would come and say: Here you assume since a decent philosophic doctrine consists of logic, ethic, aesthetics, and what have you, there must also be an aesthetics of Thomas Aquinas. And then of course that is nonsense. If we have a bit [of] historical knowledge, we know that the term aesthetics arose only in the second half of the eighteenth century; and this is not merely an accident, but one can make clear that aesthetics means something which in this form was not meant before. Today people understand by aesthetics the philosophic principles of the understanding of art, fine art. This was never regarded as a philosophic; there was no part of philosophy of this kind. There was an entirely different subject, and that is still retained when we speak of fine art: the beautiful. But the beautiful was, to use colloquial language, a major theme of metaphysics, not of a doctrine of the arts. In Aristotle, for example, the arts are discussed to some extent in the *Politics*, in the *Poetics* and such writings. The beautiful as beautiful is not discussed there. That is discussed in the *Metaphysics*. And what is the implication? The beautiful as beautiful is primarily not the beautiful made by men, by artists, but the naturally beautiful, or the beauty of mathematical proportions, what have you. That the art-beautiful should be the beautiful in the highest sense compared with the beautiful human body, for example, a beautiful mathematical proportion, that is a very novel thing which arose only the at the end of the eighteenth century.

Furthermore, in the nineteenth century people were even compelled to abandon any connection between aesthetics and the beautiful because they discovered the artistic significance of the ugly. That was a great theme, up to the present day. Or do you believe that Sartre is concerned with the beautiful? Something like sincerity, or I don't know, took the place of the beautiful. "Beautiful" would mean idealizing things, lying about things, instead of presenting them in their stark ugliness. So in other words, all these things are part of the notion of aesthetics as an understanding of the principles of art. This being so, there cannot have been an aesthetics, say, roughly before 1750, and I think one can easily explain that by looking at the term, the term being derived from the Greek term *aisthesis*, which means sense perception. And the whole thing presupposes the divorce of the sensibly, sensually beautiful colors, sounds, and so on from the intellectually beautiful. This great step was taken in roughly 1750, for example, by Burke in his *Reflections on the Beautiful and Sublime*, a consequence of British empiricism, British sensualism, and something which did not exist before. So aestheticism is a definitely modern discipline, and it leads immediately to distortion of the facts to speak of the aesthetics of Plato, Thomas Aquinas, and so on. That is only one simple example.

I conclude this part of my argument, my introduction, as follows. It seems to me that positivism becomes entangled in a difficulty which forces one to transcend [it] toward historicism, and in the first place toward theoretical historicism, which means the contemplation of the various fundamental hypotheses or absolute presuppositions without being subject as a historian to any of these fundamental hypotheses or absolute presuppositions. But this proves to be untenable, and the next insight is radical historicism, where the historical knowledge *itself* is understood to be historical, i.e., subject to a fundamental hypothesis or an absolute presupposition. And here the problem of historical objectivity in the ordinary sense of the term arises, and I believe as an obstacle which cannot be overcome by historicism in any form. We must then return to this premise which was underlying prehistoricist thought, and which in a way of course is underlying even historicism although no longer in a recognizable form: that there is *the* perspective, that there is *the* horizon which is not historically changeable; that man lives on the earth together with various kinds of brutes and plants with a heaven above him; and this is a *fact* not understood but calling for understanding; that it is a riddle; this is coeval with man and surely with any possibility of philosophy. We have a commonsense term for that. We speak of commonsense knowledge. Commonsense knowledge differs from nation to nation, from culture to culture, but common sense always includes this basic stratum of man on the earth, beneath heaven, and connected with the plants and the brutes.

Now the situation is this. This common sense is transcended in various ways, and there is one way which is particularly massive and impressive, and that is, for example, the telescope. Through [a] telescope, men see things which the unarmed eye would never see. The simple notion of heaven as a vault is destroyed by telescopic knowledge. Other commonsense knowledge, of other kind[s], is destroyed by what we may say [is] microscopic knowledge, by things which the unarmed eye cannot see. Now the commonsense knowledge of *man*, and especially as an acting and willing being, is, to say the least, less affected by telescopic, microscopic knowledge than is knowledge of heaven and of the things beneath the earth, to use a formula used in Socrates's accusation. So that I think is the basis I think from which I think one must start if one tries to understand what the natural right doctrines mean.

This is the end of my introduction. And I make here a pause so that there can be questions if you would like to ask questions. One at a time. You may raise the second question immediately afterwards, but you must not impose too much on my poor capacity. So first one question.

Student: . . . relative to the question of historicism, two considerations . . . The first is this: let us take the simple . . . tautology . . .

LS: Of what?

Same Student: Let us take the simple . . . tautology.[8]

LS: Tautology. A is A.[9]

Same Student: A is A . . . is not the same as the notion . . .

LS: I cannot—A is what?

Same Student: The notion—

LS: Yes, I understood the sentence, but I didn't understand the word. A is continuous, or what?

Same Student: The notion A is A is not the same as the notion A is . . . to A. It is the same as the notion A is the same as A. But this A has many things which it might be the same as, so it is A with respect to something. What is it A with respect to? A! But A with respect to A is not an analytic judgment but a synthetic one. Now you might be able to answer this by saying we have a synthetic *a priori*—

LS: Oh, no, these are terribly highfalutin' things of which I understand nothing. [Laughter] If you will give me a simple example. Well, let us say very crudely, the principle of identity means for all practical purposes that you say "A," when you use A in a certain context, speak of A, in order to avoid confusion you must always mean an identical and the same thing by it. Now no one does this in fact, because there is a variety of meanings and a range of meanings, or this kind of thing, so you have at least to consider whether with the variety of meanings used there is not brought about a confusion which is unnecessary. That is a way in which we do it in practice.[10]

Student: Is it necessary?

LS: To some extent it is, sure, but perhaps it is possible to understand the principle of the confusion. That a certain word varies reasonably, has this variety of meanings, and we understand what the core meaning is, and how from it the other meanings branch out.

Student: Let me take another example . . . Let's take the principle of contradiction: A is not A. You can express it as, you can express it as simply—

LS: I believe I know what is behind your question.[11]

Student: This, this—A is not not-A. It is not quite sufficient. Because, for example, let's take this part of a pen, [which] was once part of a machine. So we must say A is not: A and not-A cannot be at the same time. But this statement of time is empirical, not . . .

LS: But excuse me, but the statement *about* time is not empirical. The principle of contradiction says, of course—I mean, if you present it schematically, you say: A = B is incompatible with A [being] incompatible with B. But this must of course be specified in *n* respects. It must really be *identically* the same proposition which is asserted. For example, you say: A is tall. Yes, but compared with Mr. Miller, he may be small. So A is tall and small at the same time. And what do you say then? "A is tall" is of course an incomplete statement. If you would say, "six feet," that is less subject to this kind of quarrel. But let us not lose our way, and since I know what is behind you because you mentioned this in an earlier course, I would like to say this. There was a very great man who questioned the principle of contradiction explicitly. That was Hegel. Yes, but what did Hegel mean? Did he really mean simply to question the principle of contradiction? I answer, no, because the *final*, for Hegel, thought proceeds by contradiction, dialectically in his sense, but therefore for this very reason thinking is in motion: the contradictions make it move until it reaches the point where there are no longer contradictions. Those of you who might never have read Hegel have surely heard of the discussion which went on among Mao and Khrushchev, I believe, some time ago, where the question was: Is the present communist or socialist society free from contradictions or not?[xii] That is a consequence of the Hegelian argument. By contradictions, rather by oppositions, antagonisms, finally the good society comes about, the good society which is good because it is free from any possibility of contradictions. The ultimate truth of the Hegelian view is of course in accordance with the Aristotelian principle. One can state Hegel's general thesis as follows: Everything is mind.[12] Even the stone has mind, whatever that may mean. Now if someone would say, "Everything is body," as quite a few people have said, Hegel would say: That is wrong. The statement, "Everything is non-mind," is not—is wrong from Hegel's point of view. For all practical purposes, whatever the sophistication of Hegel may mean, Hegel of course admits the principle of contradiction. That is a subtle question into which we cannot go here.

Student: . . . Lenin said . . . Hence, as far as themselves are concerned, you can never really speak of a communist society . . . contradiction. According to Lenin, who is . . . majority . . . contradictory itself.

LS: Ya, but it is *controlled*. It is controlled, it is subjugated. No, we cannot really go into this, into this question. What is the status—only for the others—what is the relation to historicism issues? What is the relation?

[xii] In February 1957 Mao delivered a speech to the Supreme State Confernece of China on "the correct handling of contradictions among the people," in which he denounced the teachings of Stalin and the Communist Part of the Soviet Union. According to Mao, Stalin did not admit that there are contradictions in socialist society, and he set out a number of "mistakes" made by Stalin, citing information which was probably taken from Khrushchev's "secret speech," "On the Cult of Personality and Its Consequences," delivered to the Twentieth Congress of the Communist Party of the Soviet Union on 25 February 1956. See, e.g., Michael Schoenhals, "Original Contradictions—on the Unrevised Text of Mao Zedong's 'On the Correct Handling of Contradictions Among People,'" *The Australian Journal of Chinese Affairs* 16 (1986): 99-112.

Same Student: . . .

LS: What is the relation to the historicism issue?

Same Student: The relation to the historicism issue is . . . actually contemplating, actually . . . something essentially . . . this elementary . . . two of the major principles of logic, the principle of contradiction . . . foundation—

LS: To this I can only say this, that for a truly philosophic consideration, such a thing as logic cannot be taken for granted. Logic as we call it has been created by Aristotle—I mean as a discipline which can be taught, which does not mean of course that prior to Aristotle people could not put two and two together. You only have to read any pre-Socratic writing, pre-Aristotelian writing, to see that. Now as far as this practical use is concerned of the principle of contradiction in the simple *pre*-philosophic sense of the term, no question I think arises. If you say "A is B" in a clearly stated sense, a complete statement and not merely, "Mr. Miller is tall," so that it is fully clear, and you deny it, you simply destroy by the second assertion the first. You say nothing. To contradict oneself means at any rate on the first level of any reflection to say nothing. And whether it is possible, whether there are not things regarding which it is impossible to avoid contradiction, that is a very complicated question, which arises on a much higher level of reflection. We do not have to go into that now. Yes. You.

Student: I was wondering about the whole concept of the fundamental questions . . . and I was wondering what kind of assumptions go into making . . . fundamental questions. Why are certain questions fundamental? In what sense are they fundamental, and how do we know they are fundamental?

LS: Well, that is an absolutely necessary question. Now may I suggest that we postpone until we come to the beginning, where I try to show what *appear* to be the fundamental questions at the beginning of philosophy? And then we can see whether it still makes sense. Good.

Student: I'd like to go back to Collingwood. I'm not sure that I understand what your criticism of him was. It had to do with the question of eternal problems. Is that it? Did you . . .

LS: Ya, sure. Well, I mean, if one may speak of eternal problems, as he puts it, as he says in a loose sense, and I did not go beyond that loose sense. And in this sense I would say it is necessary to assert. That the question of Hobbes is not identical with that of Plato, I admit. But it is also somewhat, a bit more complicated. When you look at the title of Hobbes's *Leviathan* and also at the corresponding passage in the back of the book, what does he say? How does he identify the thing about which he is speaking in the *Leviathan*, in the title? Does anyone of you remember? The commonwealth. He does not say "the state": the commonwealth. And commonwealth is understood as a translation of the Latin expression *res publica*. The Greeks called the *polis* also *to koinon*, the common. The common, and understanding that of course emphatically, then the common is what is common to everyone, namely, the commonwealth. So if people would speak of the commonwealth, Collingwood would have some difficulties in asserting that there is no identity of the problem. So in other words, this seemingly more exact

definition, the *state*, is indeed a modern definition which in this form is applicable only to the modern state. That is true. But the question is: Is state not a very derivative understanding of something which on the primary level is a commonwealth? That would be the question.

In other words, let me say it this way. In one way, historicism—I mean, in the serious forms, like that of Collingwood, surely—is a very helpful remedy of thoughtlessness, and we should welcome *every* remedy against thoughtlessness. But if it absolutizes itself, as it does, as historicism, then it becomes again an instrument of thoughtlessness and then one must part company with it. But I can only say primarily, given the present state of discussions, the thoughtful historicists, who do not translate *polis* by state, are absolutely right in this context. But this context is only a preliminary context which with a little bit of training can be overcome by a young student, I would think.

Student: Collingwood himself, in his *Idea of History*—it could be argued that you could examine Plato and Hobbes and you could decide perhaps that Plato is greater than Hobbes—

LS: No, even I . . .

Same Student: Well, when he talks about progress, he suggests that progress would be, if we read Plato and understood Plato as Plato meant to be understood—

LS: Ya—

Same Student: But found certain questions; let's assume now Plato didn't solve all the questions. We found certain questions that arose from Plato, and we were able to answer those questions without disturbing anything that he had solved, that would be . . .

LS: Well, I know, you see, that is very good of Collingwood, but I hate to say that he contradicts himself. In other words, to say the least, it seems that there is this very sound part of Collingwood's argument and there is also a very unsound part. He contradicts himself; and a German historicist[13], whom I just happened to read, attacks him of course because of the nonhistoricist enclosures of Collingwood's thought. He cannot have it both ways. You know there is no truer word said about man than that he is the animal who wishes to eat the cake and to have it. And that is absolutely impossible. That is the practical meaning of the principle of contradiction. [Laughter]

Student: . . . historicism.

LS: No, look at this. What does it mean? Then it would mean that our absolute presupposition, to use his language, is superior to Plato's or the Greek absolute presupposition. And we have seen here that he says that is the question which can no longer be meaningfully raised. We cannot possibly devote our time to the interpretation of Collingwood; I use him only as an example. So if Collingwood is not historicist, that is fine. I have the passages which I read to you where clearly there are very lively and clear statements of the historicist position. That is the reason why I took so much time out from today to read to you these passages, because, as I say, in the Anglo-Saxon countries the historicist position is not—by no one else I have heard or read of—as

emphatically stated as by Collingwood. By the way, if you read Knox's—Knox was a student of Collingwood—introduction to the *Idea of History*, Collingwood's *Idea of History*, then you will see he develops this at some length. This difficulty exists without any question.

But we are not interested in that part of his argument where he is still something like a Hegelian, i.e., not a simple historicist, but that part where he transcends Hegel. Very simply, the difference between Hegel and the Hegelianism of Collingwood and of Troeltsch or of anyone else is this. For Hegel, there is *the* final truth. History has come to an end in all interesting respects. *The* theoretical and practical truth of fundamental character has been discovered. Second-half of the nineteenth century-Hegelians, and also some in the twentieth century say: No, history goes on. The Hegelian system must be rewritten, so to say, from generation to generation. That is no longer Hegel, you know, and then of course they get into troubles, because that means *the* fundamental questions can no longer, cannot be answered finally because of the unfinishable character of history[14]. And the last consequence: even the *questions* can no longer remain the same. Hegel took it for granted that the questions are the same, only the answers differ.

So to repeat—I mean, that is the only point which we must keep in mind—the radical historicism would assert not only that the answers change but the *questions* change. There cannot be *the true* and *the natural* horizon. There is a variety of horizons, and it is impossible to say, at least in all interesting cases, that one horizon is superior to the other. All understanding, say, if someone tries to understand, say, Plato, then, as [a] German historicist put it with a horrible expression, such understanding means a fusion of horizons, i.e., my horizon and the horizon of Plato become fused. [xiii] My horizon becomes changed. Of course I change my mind when I study Plato, but on the other hand, what comes out is no longer a reproduction of Plato's thought but my Plato, and therefore of course there cannot be, there is not *the* Plato. And whatever we mean when we try to understand, say, the *Republic*, what we wish to do is to understand what Plato meant, *Plato* meant. And there are quite a few cases when we do not understand. But then we simply do not understand. And we try all kinds of things; sometimes we have to go into etymology, sometimes we have to study Greek medicine, I don't know what, in order to understand it. But the task is a perfectly clear one and a necessary one *if* it is important to understand Plato. That is of course the first question. Ya?

Student: Historical objectivity, as we speak of it with regard to the difference between theoretical and practical historicism, would include a philosophical theory of historicism itself. In other words, from the historicist point of view, I think one would be uninterested in the issue of historical objectivity unless—we would just take the position of the radical historicist . . . unless one also says that your theory of historicism is itself subject to a particular epoch. In other words, when theoretically discussing Nietzsche . . . comes up in broader terms . . . an absolute moment. Is this not the distinguishing characteristic . . . the radical and theoretical?

LS: Yes, one can say that. But it is not sufficient, because Hegel too, who was not a historicist in either sense, also asserted that *the* truth, the discovery of *the* truth, belongs to an absolute moment. From this point of view it is not quite sufficient. But I would say this. I insisted on the historical objectivity question only because it is the most simple sign of the difficulty. A

[xiii] A reference to Hans-Georg Gadamer (1900-2002). See *Truth and Method* (New York: Continuum, 2004), 305.

historicist must engage in historical studies of some kind[15]; the name indicates it. The question is: What do historical studies mean for him? How are they conducted? What is their objective? And on the one hand he must assert that he cannot understand, say, Plato as Plato meant it, but he must understand him differently; and on the other hand he cannot but admit that he must try his very best to understand him as he meant it. So that is the simplest indication of the difficulty. Of course, one has to face the principle. But this would lead us to infinite length. One would have to speak about this thing which I didn't mention, what Heidegger regards as *the* problem which has never been seen properly before. You know, that's impossible.

Student: . . . this question of historical objectivity what's really interesting is another issue, that of whether historicism has suffered through its own . . .

LS: Ya, whether it can be maintained, the equality of perspectives. Ya? Of all horizons. That is the question.

Student: How does the historicist justify the assumption that there is no rational principle connecting the various historical realities, the various epochs, let us say?

LS: Oh, they are connected; that they do not deny. At least not all historical epochs or culture may be connected. For example, there may be no connection, say, between Aztec culture and any other culture, although some people say it is connected with Egypt. But there may be no connection whatever. That is not important. But, for example, they would of course say that there is a connection between Western modern culture and Roman and Greek culture. That is clear.

Same Student: I mean not only in an accidental sense, in a purely chronological sense, but there is—

LS: Here is an essential connection. Our Western culture is unintelligible if you do not understand it in terms of a confluence of Greek and Hebrew. Unintelligible. [It] shows in every point; this I think is a historical fact which it would be impossible to deny. But they would not say it is necessarily so. I mean, it could have happened—Hegel would have said it is necessarily so. But they would say: It so happened; it so happened and that this happening, this merely factual thing, makes us what we are. So we cannot understand *ourselves* if we do not understand these two elements and their confluence.

Student: . . . the very empirical inquiry which he shuns in the other case in treating the permanent problems.

LS: No, they do not shun empirical inquiries. If you take, for example, Heidegger, he writes, say, a book about Kant or Nietzsche. And if this is not empirical inquiry—here to take this book, Kant, quote here, quote there—it is all empirical. How does he know that Kant asserted this and this thing about the categories, different from what Aristotle said about categories, except by empirical knowledge of Kant on the one hand and Aristotle on the other? The question is—I believe what you have in mind is this: Can the historicist thesis itself be, is the historicist thesis itself not necessarily empirical? Is this what you have in mind, the overall thesis, not the individual inquiry? That is very dark. I mean, in Heidegger, for example, it is simply taken for

granted that all thought is historical. I remember in his first book there occurs this sentence, and this set me aback: that the science of an age is dependent on the *Weltanschauung* of that age goes without saying.[xiv] Fifty years before, no one would have said that. Ya, but on the other hand, people who simply continue the older traditions, to some extent even the positivists, do not see the grave importance of this question. You know? Insufficiently reflective people who would smile about such a statement as we all did now. But they would on the other hand not hesitate to speak about philosophy of history, theology of history, as a matter of course.

But this is as problematic an assumption—that there is such a thing as philosophy of history, that there is such a thing as a theology of history—as Heidegger's assertion. We must liberate ourselves from the historicist prejudices: [this] means we must, in the first place, liberate ourselves from this notion of history with a capital H. If history is merely the inquiry into the past or records of the past, that is unproblematic. That is as unproblematic as that we are sitting now in this room and talk to each other. You know? It is perfectly clear if you can ask your grandfather. But if it is a bit further back, so you can no longer ask your grandfather, you have to find an equivalent for that. There are probably documents. But it is not in itself different from consulting your grandfather, obviously. This is unproblematic. But when we speak of history today, what I call history with a capital H, we do not mean a certain kind of inquiry or of records; we mean as they call it a dimension of reality. That is the premise which has become matter of course since roughly 1800. And this must be questioned. And the true character of the task of a truly philosophic philosopher of history would be how to describe or analyze that *x* which we are in the habit, in a somewhat thoughtless habit, of calling history.

I think one can date the moment rather clearly. It was Schelling, the German philosopher, in his lectures on academic study, who stated this for the first time, you know, these two dimensions.[xv] Very simply this, he took over the Cartesian or Spinozist distinction of extension and cogitation. Extension or matter, and cogitation: thought. [LS writes on the blackboard] This [extension] is developed nature, the visible universe. And this [cogitation] fully developed is history. And from roughly this time the distinction between nature and history as two different fields of reality somehow connected with one another takes. And in other words, the question of history has taken the place—what is the old equivalent to history? I almost said it by making this. What is the equivalent to what we now call, what has come to mean history, especially in Germany, but also beyond? *The soul*. The soul is essentially historical, and then of course history takes the place of the soul. And in addition, you have the great advantage [that] when you speak of history, you do not seem to make metaphysical assumptions, whereas when you speak of the soul, you seem to make metaphysical assumptions. It is so much *nicer* to speak of history. But also more thoughtless. Mr. Butterworth?

Mr. Butterworth: Would not Heidegger say that his understanding of Heraclitus is only an understanding of this age, of the 1930, 19—?[16]

[xiv] "That historiography, like every science as a mode of being of Dasein, is factically and actually 'dependent' upon the 'dominant worldview' needs no discussion." §76, "The Existential Origin of Historiography from the Historicity of Dasein," in Martin Heidegger, *Being and Time: A Revised Edition of the Stambaugh Translation* (Albany: State University of New York Press, 2010), 373.

[xv] *On University Studies*, translated by E. S. Morgan, edited by N. Guterman (Athens, Ohio: Ohio University Press, 1966), 67-69.

LS: Oh, no, no, I cannot—it is more subtle than that. I mean, after he has—no, I mean, it is more complicated. There is *the* fundamental problem, never as such seen before by *any* philosopher. Let us call it *x* because it would only be confusing[17]. Now since this is *the* fundamental question not seen by Heraclitus adequately, therefore as a matter of fact he claims to understand Heraclitus better than he understood himself. He would also admit as a prudent man that there are quite a few fragments in Heraclitus which he does not understand, or of which he would say that they are not on the same level as certain other statements.

Now what was your question again? No, and he would say—oh no, he would say this. He would not deny that, say, fifty years or a hundred years from now someone might come and understand Heraclitus better than he did. But he would have to be a man of his caliber. But he would say: But even that[18] would be only an improvement of his understanding. There would be no radical difference, because this is *the* fundamental problem. In other words, Heidegger also might also make an occasional slip, that is inevitable. But if he is perfectly sober and at the peak of his faculties, he would say this is the—ya, but he says and does not say that the—this is the point. On the one hand he always says, only differently—say, Heidegger's Heraclitus different from Hegel's Heraclitus or Nietzsche's Heraclitus.

Student: Or Heraclitus's Heraclitus.

LS: Or Heraclitus's Heraclitus. Very good. But on the other hand, he cannot help claiming that he understands him better because he, Heidegger, sees the fundamental problem properly whereas the others did not see it. This is a constant difficulty in reading him. First, Mr. Boyan.

Mr. Boyan: I have a two-part question. First, just a minor thing. Would I be correct to state your argument as follows. Historicism . . . if it utilizes the truth, the . . . truth of relativism fails. Therefore historicism of itself fails. . . .

LS: Ya, that is not quite true. If you look, for example, at Heidegger—I mean, the word absolute truth has so many meanings. In a way, it is of course the absolute truth, the identification of the fundamental problem. That I think is the reason why Heidegger is so interesting, because he avoids the simplistic illogicalities of ordinary historicism. No, here that is the same as in Hegel. The absolute philosophy one can say belongs to an absolute moment, whereas, for example, say, Aristotle would say—it is not altogether an accident that it took so long time until Aristotle could find the truth, but it could have been found perhaps two hundred years after Aristotle somewhere in Sicily. I do not know. That is, Aristotle is not bound to give an account of his philosophy in historical terms, whereas these modern thinkers have to do it, because Aristotle does not assume the fundamentally historical character of thought as these men do.

Student: The second part of the difficulty of historicism of the . . . There are certain characteristic . . . truths of . . . age or culture or social group—

LS: But differing from epoch to epoch? Ya, sure, that is what they say.

Student: But that would be acceptable, though, to you?

LS: No, that is in a way a *fact*. This is in a way a fact. I mean, look at what they discussed in the seventeenth century and what people are discussing now. [These] are in the face of it very different questions, that is clear. This would be perfectly compatible with the fact that there may be identically the same fundamental questions, but perhaps not raised properly and adequately in each age. That is simple. Now before I ask Mr. Morrison and Mr. . . . , I would like to say this point. I would like to make clear what I plan to do with these introductory lectures. I did not want, I did not expect that I could solve these difficulties raised by positivism and historicism. That was not the function. But the function was in the first place to make clear to you, and to some extent of course also to myself, what we take for granted today, what is in the air. And you know one does not know that immediately, what is in the air, and especially not the younger people who have simply grown into it without ever having been told it. You know, to identify the things which now determine our thought is I believe the beginning of some understanding. And secondly, to indicate that there are difficulties involved in these most powerful prejudices of the age. I could perhaps put it this way. I try to identify the ruling prejudices. Whether these prejudices on the basis of sufficient reflection do not prove to be truths cannot be settled in these few meetings, but what is clear is that to begin with they are for everyone of us prejudices, not proven verities. I did not wish to—Mr. Morrison?

Mr. Morrison: You said that the . . . not something to be understood but a fact calling for understanding.

LS: You can put it this way, ya.

Same Student: And then, what did you then—what is the relation of common sense to this—?

LS: What I said is this. We have to make a distinction. There is one form of historicism which would say the answers change but the questions remain the same. That is the old-fashioned form. The radical historicism would say, as Collingwood, that the questions themselves change. And superficially that can easily be proven, as Collingwood proves it. But the question is whether beneath the surface of the change of the fundamental questions there is not a permanence of the properly understood fundamental questions. Now, and I tried to link this up with the following thing: that all philosophy, all political or transcending political, is ultimately derivative from some common sense. Here again we get immediately into a difficulty, because the historicists would say there are *n* common sens*es* of different cultures, tribes, and so forth. Again the question arises: Is there not beneath all this variety of common senses some *core* which is identically the same in all common senses? I indicated by the example of the lion and starting from there, and finally we men here on the earth, with the heaven above us. That is even, whatever we may know about astronomy and so on, it is still *true*: we still understand it, and we still take in practice all our bearings by that. Now the question is this. If this is *the* situation in which man always was and always will be—because even if there will be travels to the moon and to planets, the earth will still [be the] base; and if men should migrate to another planet, then this planet will become the earth, the base, but surely we can disregard this for the time being, these possibilities. Now[19] this is the starting point of philosophy, and philosophy as such implies no more than this awareness: man on earth, with the heaven above him, and plants, roots, and so on—and *as a riddle*, because if it is not a riddle, no questioning, no philosophy would arise. So

as long as people have an answer to all these questions in the form of an authoritative tradition, philosophy as philosophy will not arise. And I believe this is exactly what happened in Greece, and I must go into that question next time. This a bit clearer?

Student: . . . common sense . . . prerational?

LS: You know, it cannot be prerational. I mean, the mere fact that it is expressed in speech would seem to show that is not prerational. I mean, that these men, all say, men, Mr. Miller, Mr. Jones. They all are *men*. And even the women are also human beings; and the children are in a way human beings. They all know—that is all implied. This presupposes what we ordinarily mean by reason. Abstract concepts, abstract ideas, as Locke has said. Mr. Seltzer?

Mr. Seltzer: When you say we must start with the present situation—

LS: We *must* start?

Mr. Seltzer: Yes, the crisis of modernity. Philosophy is this most powerful force, and yet—

LS: Ya, one can say that.

Mr. Seltzer: Yet you suggested also that modern thought has a derivative character that presupposes the historical study today—

LS: I believe this can hardly be denied.

Mr. Seltzer: My question would then be, for students like ourselves, should we begin the study of Heidegger before we are quite . . .

LS: No, I think that would be inadvisable for a very simple reason: because you would have to learn German and know German very well. Because no, this is not translatable for the—.

Mr. Seltzer: Suppose we know the language already?

LS: No, I would say no for the very simple reason that one does not understand what Heidegger is really talking about if one does not know some other things first, if one does not have some understanding of Aristotle and so on. No. But you see, I did not think of Heidegger in particular, but the crisis of modernity, I think, becomes noticeable when you read, I would almost have said, Ann Landers.[xvi] [Laughter] Or—you know who that is. Or something of this kind. But you see it every day, every reflection. Read any essay by David Riesman,[xvii] you see it. He might not call it that way, perhaps, but if you put two and two together, you will see it. And we are all aware of that, or if we are not aware, if someone is still around and thinks nothing has gone wrong, he can

[xvi] Ann Landers was the pen name of the author of an advice column, "Ask Ann Landers," which originally appeared in the *Chicago Sun-Times* and later in newspapers throughout the United States for over fifty years.
[xvii] David Riesman, American sociologist probably best known for *The Lonely Crowd* (1952), authored with Nathan Glazer and Raoul Denney.

very easily be brought to see it. And I would say the mere fact of positivism today and how it affects the social sciences, even if one has only this intra-academic knowledge, one can see there is *something* which has gone wrong. Compare only present-day positivism, say, with John Stuart Mill. Then you see [that] certainties, the belief to have rational certainties, have become nonrational preferences. Read Mill about representative government and what people say today about liberal democracy, then you will see it. I believe if one does not have this awareness, one can easily lose oneself in all these sterile—methodology and this kind of thing.

Student: . . . understanding the crisis of modernity presupposes the study of philosophy, beginning with Plato.

LS: Ya, I believe so. And perhaps if one can know something about China would surely not do any harm. That leaves only the difficulty, you have to learn Chinese. And you cannot possibly learn all languages, and if you trust the translators or interpreters, many of whom teach in effect that what Confucius says is the same what Thomas Jefferson says,[xviii] but I do not believe one word of that. You know? But you would really have to learn. There are surely some better men who tell us—Bailey? An English scholar? Is this correct? This seems to be much more genuine, you know? You hear there certain things which you do not hear in the West. [It] does not do any harm to anyone to be aware of that. But we have somehow the Western tradition more directly accessible. I would even say even if there is something of the greatest importance, say, in China, which we should learn, we will not *properly* learn it, really learn it with the necessary clarity, if we have not become aware by a profound understanding of our own heritage of the limitations of that heritage. Then we may be open to it. Otherwise it will probably be some fad and you know today that is a big fad in certain half—well, how does someone call them, "the bogus intelligentsia." Yes?

Student: . . .

LS: For the time being.

Student: For the time being only?

LS: Ya. But I think, you see, a great effort of a not necessarily great, but a very intelligent man was required until Frenchmen and Englishmen could understand Hegel's in a way a very baroque German. The effort was needed. I have seen a few translations which people showed me and I can only say it is much better if some merely literary man, on the basis of conversations he has in Central European coffeehouses, gives a report—as a man called Barrett, I believe was his name, [did]. Barrett? There was a book; I forgot the title.

Student: *The Irrational Man*.

[xviii] It is possible that Strauss is referring to H. G. Creel, *Confucius: The Man and the Myth* (J. Day, Co., 1949). The notion has also been explored in more recent work. See, e.g., Ralph Ketcham, "Aristotle, Confucius, and Jefferson and the Problem of Good Government, *Journal of East and West Studies* 14 (1985): 127-42; Dave Wang, "Confucius in the American Founding: The Founders' Efforts to Use Confucian Moral Philosophy in their Endeavor to Create New Virtue for the New Nation," *Virginia Review of Asian Studies* 16 (2014): 11-26.

LS: *Irrational Man*.[xix] That I think is much better than many of these learned things, because he conveys at least a certain mood. That he is incompetent in everything in a more technical sense, philosophical, is I believe a lesser harm for the understanding than a technical half-competence. One surely—the ideal task would be to find the adequate English equivalents for these untranslatable, *prima facie* untranslatable German terms.

Student: . . . whether in fact philosophy is not untranslatable in a more profound sense . . . derives from the processes of ordinary German speech.

LS: No, that is not so. But I believe it has to do with Heidegger's theory. According to Heidegger's theory, the German and the Greek language are *the* philosophic languages. And accordingly [20]a certain kind of nationalism is an ingredient of this particular brand of historicism. In other words, someone who did not—if Heidegger did not hold this particular nationalism, he would be less concerned with being so radically Germanic in his way of thinking and speaking as he is. That I think is the reason. For example, I do not believe that there were such difficulties in translating Kant into English or French. This must be the last question. I am sorry.

Student: . . . language . . . you gave the example of lion and earth, man and heaven. Well, I understand that that could mean either of two things. One is there are family resemblances in the way that the words are used that could be ascertained empirically. You could conceive a society that . . . no contact . . . see how people were using the words, or some sort of essences which words describe. Now in the gist of your discussion, I took it that you were referring to the first, meaning that there were kinds of family resemblances in the ways that the words were used.

LS: Now I did not have any theory about it. But you take a dog with you into—or you see a dog in another country, and you find out sooner or later that these people, say, the Chinese: "And you mean this animal?" I mean this kind of thing. In other words, if there would be another dog, say, a very big Dane in contradistinction to a lap dog, they would also call it dog. Then you would gradually see that they mean the same thing.

Student: . . . problem for objects.

LS: What do you mean, objects? What, for subjects, or—?

Student: A chair—rather than concepts.

LS: These are all questionable distinctions. I do not know what concepts are. Honestly, one cannot take for granted these distinctions. But if you say, for example, such things which are not *things* in that sense—as, for example, anger—I would say then you would also gradually find out if the Chinese gets angry and we see certain signs by which we are in the habit of recognizing anger, and you find out what the word for that is. I mean, one must not assume the adequacy of these traditional distinctions which may be as confusing as are helpful. For example, concepts, objects, and so on. There are great questions. Object is not a natural concept which we must use.

[xix] William Barrett, *Irrational Man: A Study in Existential Philosophy* (Garden City, NY: Doubleday, 1958).

We use it colloquially, loosely, as someone[21] spoke of the philosophy of a certain Italian count, now living, as philosophy of *haute couture*, of the higher form of tailoring. Then philosophy, you must admit, is atrociously misused. We all misuse these terms which originally had a very clear and important meaning, and we constantly debate these words. "Object" is one of them. When we speak in this vague way, say, "all kinds of things," that is much more philosophic than to speak of objects or entities. Because when you say "all kinds of things" you do not *claim* to have analyzed them; you leave it in the primary vagueness that can be an incentive to thinking. But if you use such technical terms like objects and entities, you shut out the very effort of thinking because you have already such a technical term. Let us not do that. So next time I hope to begin with my discussion of the first form of natural right.

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[1] Deleted "Mr. Butterworth isn't here. Oh, he is. Could I see you after class?
I have been told some of you would like to know what the requirements are. I thought I had made myself perfectly clear and understood. I gave a list of the required readings to the bookstore which I'm sure you all have seen. What else? What does the question mean? What is the difficulty? Or do you think one must make a distinction between the ostensible requirements and the true requirements? [Laughter] What else does the question mean?"
[2] Deleted "What's the difficulty? Someone was willing to speak up? You?
Student: . . . meant . . . what are the papers to be . . . . **LS**: Oh, that is simple. At the meeting, after we are through with our course, the day following, there will be a written examination of the length of an ordinary class, one hour and a half. And you will be given one or more questions, and you are supposed to answer that. And I think that I do not give the lecture course for no purpose. I hope that it conveys a certain instruction, and so that part of the requirement is, well, not necessarily attendance—I mean, if you have any other way of getting what I present here, by microphone, and I don't know what other devices there are, it's all right—this I think is understood. Is this sufficiently clear? So I follow a general rule to have an eight-week quarter. We will of course be one week late because I did not give two courses, and—that is to say, on the Monday following the last Wednesday of the lectures, there will be in the same place at the same time the written examination. Is this clear enough? Or is there anyone here who finds to find out anything more. Yes?"
[3] Deleted "what."
[4] Deleted "men, thinking men."
[5] Deleted "So."
[6] Moved "not" from after "ultimately."
[7] Deleted "basis."
[8] Deleted "**LS**: I didn't hear that. **Student**: Tautology."
[9] Deleted "Yeah."
[10] Deleted "I mean, sometimes"
[11] Deleted "Let me give you…yeah, sure—."
[12] Deleted "Yeah."
[13] Deleted "criticized that."
[14] Deleted "yeah?, the unfinishable character of his history."
[15] Deleted "otherwise."
[16] Deleted: "LS: No, who, Heidegger? Butterworth: Yes."
[17] Deleted "to do."
[18] Deleted "would is—it."
[19] Deleted "if."
[20] Deleted "in other words."
[21] Deleted "said"

Session 5: October 22, 1962

Leo Strauss: [In progress] —briefly repeat what I said in the introductory part of this lecture before I turn to my subject. When speaking of natural right today, one must never for one moment forget that natural right is today generally rejected, and one must consider the grounds on which it is rejected. The grounds are twofold, corresponding to the two most powerful schools of thought today: positivism and historicism. Positivism turns into historicism because the fundamental premise of science proves to be a hypothesis which can never become more than a hypothesis and which owes its power or validity to a decision, to a historical decision. Hence the fundamental reflection must consider this historical decision—our absolute presupposition, in the terms of Collingwood—in its connection with other absolute presuppositions. Philosophy or metaphysics becomes history, if history of a certain kind. But historicism in this sense transcends indeed all absolute presuppositions. It looks at them from without. But one can raise a question: With what right does historicism exempt itself from the historicity of all other human thought? If this reflection is made, theoretical historicism turns into radical historicism. This means there is not *the* true perspective, *the* absolute horizon, and as a consequence there cannot be historical objectivity in the strict sense. One cannot understand the thought of the past as that thought understood itself. One can only understand it differently than it understood itself, not better than.

Now I have discussed briefly the difficulties and absurdities to which this view leads. It seems clearer and safer to assume that there is indeed *the* horizon, *the* right perspective, or *the* common sense. But if there is such a thing, it is surely not immediately available at any time, for what is immediately available at any time differs from time to time, from epoch to epoch, from culture to culture. Yet this is in itself compatible with the possibility that at every time man can ascend form the immediately available, from the prejudices of his time and place to what is no longer prejudice, to the unquestionable and indubitable. Such a step was taken in an epochmaking manner by Descartes. The title of his First Meditation [is], “About Those Things Which Can Be Called into Doubt,” and the first answer is everything should be called into doubt and this doubt should take place, this absolute doubt should take place once in one’s life. In this way Descartes discovered the ego, the “I think; I am,” and this position taken by itself is so-called solipsism, the view that we are certain only of the fact that we have certain ideas, certain thoughts, but nothing more. When we speak, for example, of a tree, strictly speaking I have only the thought of a tree or the thought of other human beings. My own actual thought is the only thing which is certain. But this solipsism is not credible, even if it were theoretically irrefutable. Descartes himself has no doubt that he lives with other men, that he has taken the details of his doubts, for example, say from Cicero, and that he writes a book which is meant to be read by other human beings. There is a printer, and booksellers, and of course quite a few other things. So he does not seriously doubt that for a moment.

We all assume something and must assume it without necessarily understanding it. Our whole life rests on such a fundamental reliance, to use the Platonic expression. The indubitable is that without the acceptance of which every human act, and in particular philosophy and science, do not make sense at all. This is the premise that a human being [is] born from human beings, brought up by them, living with them on the earth where there are also stones, plants, brutes and

so on, under heaven. This is the starting point of all philosophy or science in particular, regardless of whether it accepts or rejects natural right. From this situation all primary questions arise, that is to say all questions which do not yet presuppose answers found by philosophy or science. And furthermore, in this primary situation in which we all can find ourselves, on a moment's reflection there is a hierarchy of questions: important and unimportant questions, permanent and momentary questions, and everyone can see that. For example, a question of the moment: Should we wage—"we," some tribe, of course, not this country—should we wage a war against our hereditary enemy now or next year? Question of the moment implies that winning a war is good. This assumption, winning a war is good, is of course not limited to the present situation anywhere or at any time. All thoughts about now, here and now, are based on something which underlies them, something—permanent and fundamental opinions regarding what is good in the widest and loosest sense of the word. These opinions are no longer questioned. For example, the opinion that winning a war is good is ordinarily not questioned, but the question is: Can we win the war? But on reflection these opinions prove to be questionable, and the question, simply stated, is, "What is good for man as man?" and [it is] obviously a question of concern to man as man, whereas the question regarding the number of stars or of species of animals is not in itself an urgent question. It could become it under certain circumstances, but the question of what is good for man as man is urgent for man as man. But of course the fundamental opinions are not necessarily questioned. If and when they are questioned, philosophy arises.

This much as a summary of my introduction. Now I turn to the subject—the connection will become clear, the connection with natural right problem and what I just said will become clear soon. Now what is natural law, let us say first. Natural law is a law by nature, i.e., not by human establishment. Furthermore, a natural law must be known to be law by nature. This knowledge must be natural; otherwise that law could not be binding, i.e., it could not be a law. This does not mean however that the natural law, if there is such a thing, is by nature known to be a natural law. If this sentence is a bit hard to follow, I repeat it: the natural law is not by nature known to be a natural law. I illustrate what I say by a quotation, a very famous one, taken from Sophocles's *Antigone*, verses 449 following. Antigone is speaking—or first Creon: "And you, [you, Antigone—LS] dared to break these laws" which Antigone had broken. Antigone: "Yes, yes, for these laws were not ordained by Zeus and justice, who sits enthroned with the gods below, she did not enact these human laws, nor did I deem that thou, a mortal, couldst by a breath null and override the unimmutable, unwritten laws. They were not born today, nor yesterday. They die not and none knoweth when they sprang."[i] The law of Creon is not valid if it contradicts this other law, these unwritten and certain laws of the gods. But Antigone also says, as you have heard, these laws live always, at every time, at all times, and no one knows from where they came. You see a difficulty here: on the one hand, they come from the gods; on the other hand, one does not know from where. She surely recognizes a law higher than human law, but this higher law is not necessarily a natural law. Here there is no distinction made yet between a natural law and what later on came to be called a divine positive law, a law which is not natural but is valid because it is established by a god or gods. We keep this in mind: a higher law is not necessarily a natural law, and therefore when you have in this country a tradition, a higher law tradition, this does not necessarily mean, although for a considerable stretch it surely means, a natural law.

[i] Presumably Strauss's translation.

Natural law presupposes, obviously, the concept of nature. The knowledge of natural law as natural law presupposes awareness of nature. Such awareness is not coeval with man, and the simplest proof I have, and I'm sure those of you who know other languages have other proofs, is that of the Old Testament. There is no Old Testament term for nature. Nature is not by nature known, as we can say trees are by nature known, or grass, or whatever it may be in a given country. These things—men living there know them without any effort. Nature had to be discovered. We do not know when and by whom it was discovered. The first mention of nature[1] known to us occurs in Homer's *Odyssey*, and Homer mentions nature—in the whole work of Homer as it has come down to us, nature is mentioned only a single time. This passage is of utmost importance, not merely because it is the first occurrence but because it is made reasonably clear there what is meant by nature.

In the tenth book of the *Odyssey*, Odysseus tells of what befell him on the island of Circe, the goddess-sorceress. Circe had transformed many of his comrades into swine and locked them in sties. On his way to Circe's house to rescue his poor comrades, Odysseus is met by the god Hermes who wishes to preserve him. He promises Odysseus an egregious herb which will make him safe against Circe's evil arts. Hermes, I quote now: "drew a herb from the earth and showed me its nature. Black at the root it was; like milk, its blossom. And the gods call it moly; hard is it to dig for mortal man, but the gods can do everything."[ii] The gods can do everything: What does this mean? The gods can dig the herb with ease, for example. The gods' ability to dig the herb with ease would of course be of no avail if they did not know the nature of the herb. The nature: what its looks and its power. The gods are omnipotent because they are not indeed omniscient, but they are the knowers of the natures of the things, of natures which they have not made. Nature means here the character of a thing or of a kind of thing, because there may be many such herbs around; the way in which a thing or a kind of thing looks and acts and the thing or the kind of thing is taken not to have been made by men or gods. If we were entitled to take a poetic utterance literally, we could say the first man we know who spoke of nature was the wily Odysseus who had seen the towns of many men and thus come to know how much the thoughts of men differ from town to town or from tribe to tribe. I will make this clear in the sequel.

Now the Greek word for nature, *physis*, seems to come from a stem, *phyein*, which means to grow. The looks and powers which a thing possesses it has come to possess. This herb, for example, didn't have it when it was a seed or when it was not yet fully grown. A thing possesses these looks and powers only when the growth is completed, at the term of the growth. They belong to the thing; they are the thing. Different things or kinds of things have different natures. Take such a simple popular phrase, "*X* takes like a duck to water." A duck takes to water by nature, which doesn't mean that only ducks do it, but ducks are particularly well-known examples. Or if we say something goes against a man's grain: you may try to brush your hair against its grain. Grain here means how the hair naturally grows, and you brush against it, against the grain. So[2] in other words, these experiences on which the notion of nature is based are still immediately accessible to us. This also implies that not everything is natural. Something may be against the nature. Against nature. For example, if you brush against the grain, it may be unnatural. That is an essential implication of the Greek notion of nature.

[ii] *Odyssey*, 10.303-306.

Now there are things which are not natural without being, however, unnatural. For instance, a chair. No one in his senses would call a chair as chair unnatural, but it is not natural. Why is it not natural? Simply, chairs do not grow but are made. Nature is understood from the very beginning in contradistinction to art, art meaning not art with a capital "A" but every human know-how of bringing into being things which would not be without human production. Yet it is understood that art always depends on nature and not vice versa: no artifact without natural materials, but on the other hand there are quite a few natural materials which do not have to be tampered with, improved, by art.

Now both the things which are by nature and those which are by art are in themselves. What does this mean? I read to you a passage from Collingwood which indicates a difficulty here which was not seen in this way in ancient philosophy. In his autobiography, page 44, we read. One of his antagonists at Oxford, Cook Wilson, said "Knowing makes no difference to what is known" and Collingwood asserts this was meaningless.

"I argued that any one who claimed, as Cook Wilson did, to be sure of this, was in effect claiming to know what he was simultaneously defining as unknown. For if you know that no difference is made to a thing θ by the presence or absence of a certain condition *c*, you know what θ is like with *c*, and also what θ is like without *c*, and on comparing the two find no difference. This involves knowing what θ is like without *c*; in the present case, knowing what you defined as the unknown."[iii]

Is the difficulty clear to you? To know a thing as it is in itself, meaning as it is wholly independently of our knowing it, we discover it. Our discovery does not affect it. Now Collingwood [says], and he is not the only one who says that, this is impossible to ascertain because we know the thing only as discovered. How it was prior to the discovery or when it is not viewed? It is unknowable. How then can one say that the things which are by nature or by art are by themselves? How can we know that they are not by virtue of our perceiving them and hence that they are merely phenomena and not things in themselves? This plays a considerable role in modern thought, also of course in positivism, although it is perhaps not stated there. But this conclusion, it seems to me, does not follow. From the fact that we cannot know how things are in themselves in the sense as not affected by our perception, it does not follow that they are how they are by virtue of our perception. It can as well follow that our perception perceives them necessarily as they are in themselves. In other words, this fact brings us up to a fundamental question which cannot be simply decided. The alternative is this: all things as known are relative to man, man's perception. The alternative is [that] man is the only earthly being which can know all things as they are. On the basis of this simple discussion, no decision can be reached. Yes?

Student: I thought I understood you to say that Collingwood is arguing against a statement which said that you can't know what a thing is without knowing its fundamental characteristics.

LS: No. Well, let me repeat to you again the statement literally: "knowing makes no difference to what is known." Something is in itself what it is regardless of whether one knows it or not. And Collingwood says this is an unprovable thing because we know the thing only as known. Now, but the conclusion which Collingwood draws from it, namely, an essential relativity of all

[iii] R. G. Collingwood, *An Autobiography* (Oxford: Clarendon Press, 1939), 44.

things to man, with the implications they differ in their relation to other beings—to frogs, to horses and whatnot—this is only one possible answer. The other answer is that man is the only being which can know them as they are. In other words, to use this lingo, the difficulty is as compatible with "idealism" in this sense as with "realism." I mention this only in passing lest you misunderstood what was meant by the assertion. We see things: that dogs are by themselves, they are not made by man; chairs are made by man. But yet dogs and chairs have something in common, and what they have in common will appear from the following consideration which is absolutely necessary if we want to understand what nature primarily means: the dogs and the chairs are not by virtue of our holding them to be. Whether you hold them to be or not does not make any difference to them.

And this appears if we look at those things which are only by virtue of our holding them; for example, unicorns. Yes? Unicorns. Some people say unicorns are, just as there are dogs and chairs. Now then we say, perhaps, "Yes, [in] some outlandish place," but then we talk to people who have been there and we find out no one has ever seen them, and then we assume that unicorns are only by virtue of man's holding them to be, not in themselves, as chairs and dogs are. Is this clear? The innocent example: cows are sacred. This is grammatically like cows are, say, white, or cows give milk. But cows give milk—[3]we all have seen that or we know it from trustworthy people who come from the country. And cows are white or brown, or black even maybe. But cows are sacred. Are they sacred in themselves? They are sacred for the Hindus, not in themselves. Or the dead must be cremated: that is also by virtue of men holding that, not in themselves. There is a third kind of things apart from the natural things and the artifacts: the things which are by *nomos*.

Student: [Could you repeat that?][iv]

LS: There are things which are by nature, *physis*. There are things which are by art, artifacts. And there are thirdly things which are by *nomos*. Now *nomos* is usually translated by "law" or "custom," but it has a much broader meaning than law and custom has today. Everything which is by virtue of human establishment, agreement of men holding it to be. I cannot translate it better. Now this, the distinction between nature and *nomos*—I will now use the Greek word—is much more important, much more fundamental than the distinction between nature and art. The distinction between nature and art is obviously necessary to make. It does not in itself cause any difficulty. Nature and *nomos* point to different kinds of regular behavior. Dogs bark; Hindus do not eat beef. It's all regular behavior. Prior to the discovery of nature, no fundamental and explicit distinction between these kinds of regular behavior was made. All things have their custom or their way. The sun has its way: rising in the east, setting in the west. Dogs have their ways. Ducks have their ways. The Hindus have their ways. These are all "ways," understood here always in the same manner. The discovery of nature means the realization of the fundamental difference between these two kinds of ways. Or differently stated, the discovery of nature means the splitting of the original notion of way into nature on the one hand, and *nomos* on the other. That this was a very great step you can see from the fact that this distinction is not made always and everywhere. It is not made—to take the example where I have first hand knowledge, it is not made in the Old Testament, and this has had very grave consequences. From time to time people arose in the West who, guided somehow by the Old Testament understanding

[iv] The transcriber notes: "Requests a repetition of what was just said."

of things, denied that there is a nature. Everything is custom. I mention two great names in the West who in different ways do that: Pascal and David Hume. They do it in very different ways, but these are all—and there are also traces, quite a few traces of it in the Middle Ages.

Now the *nomos* determines not only action, what men do, but also thoughts as well. Naturally it does it because there must be given a reason why you should abstain from this or do that. The *nomos* necessarily contains thoughts regarding the gods, regarding the whole. The *nomos* in its way comprises the whole. It is, to use a modern word, a *Weltanschauung*. A *nomos* is much more than custom, [it is] a way of understanding the whole. It is authoritative opinion about the whole. Now there is a variety of such opinions. The Greeks have these opinions; the Persians, those. And if you read Herodotus, you would see that this is a major concern of his: to see how the *nomos* differs from tribe to tribe, from country to country. Primarily everyone belongs to his tribe and does not know anything but the authoritative opinion giving his tribe its character, and also justifying the actions commanded of obedience. But then some men meet other tribes. The classic example, a mythical example in a sense, is Odysseus, the traveler, and that the first man we know of who used the word nature was a man who had traveled so much, who had understood the minds of many towns, is surely no accident.

Once one becomes aware of the fact that the authoritative opinions are only opinions, one is necessarily concerned with the true account, with the account not dependent on *nomos*, on the agreement of this or that tribe, but an account which corresponds to nature. And from this we see why the distinction between *nomos* and nature is so crucial. Art presupposes nature. *Nomos* too presupposes nature, but *nomos* also conceals nature because it asserts that these and these are the true principles, as they were later on called. The distinction between nature and *nomos* is coeval with philosophy. We cannot prove this entirely for the very simple reason, because we have hardly anything left of philosophy prior to Plato, but there is sufficient evidence in some of these earlier philosophers which shows that they knew it. At any rate, the distinction between nature and *nomos* is not a notion peculiar to the sophists, as you read in many textbooks. The proof is very simple. The traditional distinction between natural right and positive right embodies the distinction between nature and *nomos*. Nor can one even say (this in passing) that the sophists exaggerate the distinction between nature and *nomos* into an opposition. You only have to read the fifth book of Plato's *Republic* to see that here such basic institutions as private property and marriage are declared to be by *nomos* only and not by *physis*. I have to take up the question of the sophists later, but this only in passing in order to make clear that it is necessary to reconsider the textbook versions.

Student: You made a statement a few minutes ago about the way dogs bark and Hindus abstaining from the eating of beef. I'm a little confused right now. When you say that dogs bark the way they do because of the nature—that it's inherent in their nature to bark and that the Hindus, I'd say, eat beef—is it by nature that they eat beef?

LS: No, you misunderstood me. What I wanted to say is this. The examples were the correct ones. Before nature is seen as nature, men must have had some equivalent for that and I say the equivalent for it are such notions as, in our language, regular behavior, but in a more natural language, way or custom. Now all things have their ways or customs, and on this level the way of the Hindus, the way of the Jews, the way of the Greeks, the way of the [. . .], or whatever have

you, is a way as much as the way of dogs, of cats, of [. . .] That's all. And I wanted to make clear what the discovery of nature means—to make somewhat clearer at any rate that the discovery of nature means a splitting up of the primeval notion of way or custom into nature on the one hand and *nomos* on the other. Good.

Now on the basis of the distinction between nature and *nomos*, which is coeval with philosophy, the first question of concern to us is this. There are things which are by nature good for man, for instance, for health and strength. A diet of hemlock, for example, is obviously not good for man by nature, whatever even the medical profession might have agreed upon. I mean, if you—is this improper? Think of this drug they spoke of a few weeks ago. You remember? With a "th" it begins; I forgot the name.[v] Good. But there are also things which are good[4] [by] nature, for something called happiness, for man's happiness. For example, things which drive a man crazy—drive every man crazy—would be bad for him by nature. In other words, if there are natures, there are things which are by nature good for man, as there are others which are good for dogs. The key question is this: Does what is by nature good for man include something like right, right in the sense of justice? Does it include something like noble or base, or is everything called right and noble merely conventional? The clearest statement of this issue, but only in the most general terms, you would find in the tenth book of Plato's *Laws*, page 889.

Now both answers, there is a natural right and there is no natural right, were apparently given from the very beginning—prior to Plato, that is to say. But, and here I have to say a word about the difficulty, we must never forget that Plato is the first philosopher from whom we have books or any other writings. Prior to Plato, we have books by nonphilosophers, by poets, historians, or else fragments of philosophers. And this is of course a terribly dangerous thing, to form a judgment on the basis of fragments. That you can see from a simple consideration. How well are they vouched for? How well are they selected? From what point of view are they selected? What was the context in which these individual sentences occurred? We do not know. We have also reports about these earlier philosophers, and here we are on somewhat safer ground if the reporter is known to be a man of judgment; say, if the reporter should happen to be Aristotle, we would say: Well, we couldn't have a better reporter. Whatever some people say—there are people who say a philosopher is the worst reporter about other philosophers, you know, because philosophers try to understand and they dig deeper, and then something comes out which no one else has seen, that's paradox and therefore it's wrong. And so that a simple, stupid copyist would be a much better reporter, which I'm afraid is not true, because without judgments you cannot report. But at any rate, I only wanted to indicate the difficulty with which we are faced when we come to this point.

Of course I cannot go into this infinite question. I will only say how I proceed. There is a famous collection of the so-called pre-Socratic philosophers made by Diels and there is an English translation of the fragments by Miss Freeman, *Ancilla to the Pre-Socratic Philosophers,*[vi] and we will simply look at some of these fragments. But someone had—you had a question.

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[v] Thalydomide.

[vi] H. Diels and W. Kranz, *Die Fragmente der Vorsokratiker* (1910); Kathleen Freeman, *Ancilla to the Pre-Socratic Philosophers: A Complete Translation of the Fragments in Diels*, Fragmente der Vorsokratiker (Cambridge, MA: Harvard University Press, 1957).

Student: [. . .]

LS: Yes, yes. That is a common view. All right. I would like—I shall gladly, [so] that you see that there is nothing very difficult about that, I will read to you a passage from Aristotle's *Politics*, if you don't mind, one of the most popular passages—popular, I mean *should* be popular—passages in that work. But you will easily see that it is not very difficult to understand. It is at the beginning of the seventh book, and I'll just read it to you.

"We put all things good into three groups: external goods, goods of the soul, and the good of the body. [Does this make sense to you? Yes?[5]—LS] Surely nobody would deny that the perfectly happy are bound to possess all three for nobody would call a man perfectly happy that has not got a particle of courage, nor of temperance, nor of justice, nor of wisdom, but is afraid of the flies that flutter by him [look, what a misery—LS], cannot refrain from any of the most outrageous actions in order to gratify a desire to eat or to drink, ruins his dearest friends for the sake of a farthing, and similarly in matters of the intellect also is as senseless and mistaken as any child or lunatic. Although these are propositions which when uttered everybody would agree to, yet men differ about amount and degrees."[vii]

But this is the rough notion. May I state it in my own simple language, what they meant by happiness? In the first place, a state of contentedness. But we all have seen people, loonies they are vulgarly called, who are contented, smiling all the time. But no one would, except if he is very miserable, would say: Look, that is a happy man. So let us add a qualification to contentedness. Let us say an enviable contentedness, a contentedness of which you would say, "I wish I had that." Now this is a very rough and crude notion of happiness, but I think it is still intelligible; it was always intelligible. And this surely needs a lot of refinement for refined people, but for unrefined people we might leave it as Aristotle said it.

Now what's your point? So[6] something like this is by nature good. I mean, a man who is constantly frightened—today they have terrible words for that, you know, but why not call it by the simple word? Or a man who is completely unable to stand some thirst and hunger, and therefore so dependent, so dependent, a terrible state. You know, if he has self-control regarding these matters he's much better off. And also if he [is] a man without any friends, a born traitor, sells everyone down the river, he cannot but be miserable. So these are elementary true verities which we all discover in the course of our lives, some of us very early; some have to go through all kinds of complicated bad experiences to learn them, but they are all right. That is what is meant by nature good for man, apart from mere health and strength. Now your point.

Student: [. . .]

LS: Yes, well that is—oh, that is a very long question. This raises a number of questions, but do you really believe that someone can run for Congress on a record regarding his character like this: that he is afraid of every fly, cannot control himself for a moment, and so on? No. I mean there are such people; I have no doubt about it. But generally they are—if they have all these qualities all together they cannot even have the career of Al Capone, because he surely was not afraid so easily. But the question is—here also the question arises: Is the contentedness which

[vii] Aristotle, *Politics* 7.1.1-3; 1323a23-36. Presumably Strauss's translation.

Capone, from what I know of him, must have possessed, is this an enviable contentedness or is there also something like an incompetence to judge, as we assume in the case of the contented lunatic? That would be a question. Your practical answer is, of course: He is incompetent. I mean,[7] your answer is "incompetent"; you wouldn't for one moment seriously consider to become aligned with Capone or so, or his successors, but still, in the classroom you are open to all kinds of possibilities which wouldn't arise in life. What I suggest is that you make clear to yourself why these possibilities, this particular possibility which in the classroom is an open possibility, is not recognized by you as a serious possibility in your life. I believe you should think about that. Then you would see that is not so entirely absurd. Yes? All right, these two questions and then we go on. Yes?

Student: You said also that health is necessarily good for men . . . There were medieval monks, for instance, who thought that suffering and . . . was the best way to save their souls . . .

LS: Yes, but you must not forget that when Aristotle speaks he does not make any such special assumptions. I would have[8] [to know] more about these monks you speak about; whether they did not, for example, engage in helping the sick. And helping the sick—and that means, includes also to help them to some extent in becoming well again. In other words, whether ascetic practices necessarily imply the view that health is bad. You do not have to go to any medieval monks, you have only to read Plato's *Republic* and then you will find a case of a young man who Socrates knew, called Theages, and Socrates says it is very good for him that he is sickly. All these statements permit exceptions. For example, a man who would engage in a career of good-for-nothingness of the worst kind might come to his senses by becoming sick. But this does not mean that sickness is not an evil. It means only under certain conditions it is a lesser evil—no, generally speaking, sickness is a lesser evil than[9] to have an abominable character. That goes without saying. But in itself it is [not] a good thing. You were [. . .] on it. You cannot take these things out of their context, isolated action. You would have to look, if I may say so, at the theory behind ascetic practices; whether they mean truly health is an evil simply or whether they mean only health is not so important, which is a perfectly reasonable thing. Or perhaps in many cases health is a danger.

Student: Well, even if that is so, isn't it possible to determine naturally the conditions under which the exceptions [. . .]

LS: No.[10] What is meant only by this is that there are some crude pillars established by our nature, and if we do not recognize them we[11] become insane. We have no orientation anymore. To recognize the true order of these things, this requires longer experience and requires also some other things. But to begin with, I think it is in no way a paradoxical statement if we say health is a good. If someone would say health is the greatest good, then quite a few people would rise up in arms. And I have seen so many healthy good-for-nothings that I cannot see that health is the greatest good, but that it is in itself a good is something on which we all act most of the time. That's good enough. Aristotle's—this statement is a popular statement reminding people only of the crudest signposts erected by nature. Yes? Were you the one?

Student: [. . .]

LS: I am familiar with that. The whole history of modern moral philosophy can be said to be a criticism of the notion of reasonable contentedness.

Same Student: [. . .]

LS: Oh, excuse me, if someone says dogs have six feet and convinces generations of men, this doesn't refute me. I mean, after all, we have to look where this denial of the simple notion of happiness has led to and is leading us to. I mean, you cannot leave it at a simple bald statement. You have to consider all its consequences before you judge. The pursuit of happiness, as it came to be understood by many people, was still called pursuit of happiness, but now happiness is something which is always evading man, always evading man, so happiness consists entirely in chasing something which cannot be reached, in movement. But the question is: Is this not perhaps underlying what in present-day sociology is called (how is it called, again?) the other-directed man?[viii] That status symbols, roles, take the place of the substantial goods, that is a long question. Don't believe that the mere variety of opinion in itself settles, proves the fact that no one of these opinions can be reasonable.

Student: [. . .]

LS: Well, if you would give me the time to try to show how Plato and Aristotle tried to find their bearing in these very complicated matters, it would perhaps be a bit clearer. But we must go step by step, and the only step we have taken hitherto is that the whole doctrine developed both in modern and in ancient times is based on some understanding of nature. Now the classical understanding of nature understands nature essentially in contradistinction to art and to *nomos*, and in modern times this distinction gradually loses its meaning, but that is a very long process and we have to follow it. The modern thesis can be stated very simply, as it was stated by someone: nature is not a term of distinction, i.e., everything is natural.[ix] To brush your hair against the grain or following the grain is equally natural. You know, everything is natural. Have you ever heard that? That is today the so-called naturalistic view. Everything is natural.[12] I hope, if I do not have to answer too many questions, I may come to that point.

Now let us then try to discuss the issue of natural right prior to Plato. Now the fragments of importance to us occur in the first place in Heraclitus, a philosopher from Ephesus, Asia Minor. And—you have it? Well, we don't have to read all these fragments which are relevant, but some we must read. Let us read the second fragment. "One must follow the common. While the *logos* [let us say, while the true account—LS] is common, most men live as if they had a mind of their own."[x] What this means is indicated in another fragment, number 89: "When we are awake we all have the same world, but when we are asleep each of us has his own world."[xi] So the characteristic of the truth is its being common. That doesn't mean that all men actually possess

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[viii] "Self-directed" and "other-directed" are terms used by David Riesman, Nathan Glazer, and Raoul Denney, in *The Lonely Crowd* (1950).

[ix] See John H. Randall, "Epilogue: The Nature of Naturalism," in *Naturalism and the Human Spirit*, ed. Yervant Kirkorian (New York: Columbia University Press, 1944), 357. See also *Natural Right and History*, 90, 82.

[x] Strauss's translation. See *Ancilla to the Pre-Socratic Philosophers*, fragment 2, 24-25.

[xi] Strauss's translation. See *Ancilla to the Pre-Socratic Philosophers*, fragment 89, 30.

it; but all men can possess it, can agree regarding it. Let us turn to number 112, fragment 112. Yes, read.

Reader: "Moderation is the greatest virtue, and wisdom is to speak the truth and to act according to nature, paying heed (*thereto*)."[xii]

LS: So here, do you see this is linked up now with nature? That common which is the truth is that which is according to nature, which is not only decisive for our thinking but also for our good action. Number 114.

Reader: "If we speak with intelligence, we must base our strength on that which is common to all, as the city on the Law (*Nomos*), and even more strongly. For all human laws are nourished by one, which is divine. For it governs as far as it will, and is sufficient for all, and more than enough."[xiii]

LS: Yes. Now here this common is suddenly called the divine *nomos*, the divine law, the source of all human laws. Here—this is something like a natural law, although it is not called the natural law. To understand this cryptic remark, we must know what Heraclitus teaches regarding the god or the gods and regarding law. Fragment 30.

Reader: "This ordered universe (*cosmos*), which is the same for all—"

LS: You see again: the same for all. That is a guarantee of its truth. It is not one's private thing. Yes?

Reader: "was not created by any one of the—"

LS: "Was not made." "Created" is a very difficult word. Was not made. Making like a chair is made. Yes?

Reader: "gods or of mankind, but it was ever and is and shall be ever-living Fire, kindled[13] in measure and quenched in measure."[xiv]

LS: Yes. So the god or gods do not make the cosmos. The cosmos is ever-living fire which has its intrinsic measures. So the cosmos is not what we immediately see, the sun, moon, and stars, although that belongs to it, but it has a hidden source which he calls the fire, and this fire acts according to measures. In another fragment[14] he speaks of right, the goddess of right—in Greek, *dike*. Read that, 94.

Reader: "The sun will not transgress his measures; otherwise the Furies, ministers of Justice, will find him out."[xv]

[xii] *Ancilla,* 32. Italics in original.
[xiii] *Ancilla*, 32.
[xiv] *Ancilla*, 26.
[xv] *Ancilla*, 31.

LS: Yes. So in other words, the sun cannot do what it wishes to do. It is subject to an order. There is a cosmic order. This is *the* right. Paragraph 53.

Reader: "War is both king of all and father of all, and it has revealed some as gods, others as men; some it has made slaves, others free."[xvi]

LS: Yes. So now what he formerly called fire and right or justice he now calls war. Very strange. This war generates— [xvii] —gods, father and king of all, all gods. So it is not a god properly speaking. But then in the sequel he makes clear something: that the difference between gods and men has a different character than the difference between free men and slaves. The difference between gods and men is not made, but only revealed or shown. This difference is divine or natural. But the distinction between free man and slave is only made, not revealed. This I understand to mean it is due to *nomos*, meaning this: who is a free man and who is a slave depends on war in the narrowest sense of the term, on the outcome of human wars. But there is something broader, all encompassing: War with a capital "W," which characterizes all things; and this makes—this principle which is both right and war at the same time, both peace and war because it acts by opposites and therefore in this way establishes differences. Now let us read one more regarding law, fragment 44.

Reader: "The people should fight for the Law[xviii] as if for their city-wall."[xix]

LS: Yes. The *demos*, the common people, but this can also mean the *polis*; the city, must defend the law like a wall. And now let us reread number 114, which we read before.

Reader: "If we speak with intelligence, we must base our strength on that which is common to all, as the city on the Law,[xx] and even more strongly. For all human laws are nourished by one, which is divine. For it governs as far as it will, and is sufficient for all, and more than enough."[xxi]

LS: So whereas the city must define its law, its *nomos*, like a wall, those who speak with intelligence must strengthen themselves with a divine law much more than the city strengthens itself with the law. So all human laws are derivative from the divine law, but they are essentially different from it. What does this, however, mean? What guidance do we get? The most important fragment is number 102.

Reader: "To God, all things are beautiful, good and just; but men have assumed some things to be unjust, others just."[xxii]

LS: Now what does this mean? "For god, all things are just" . . . There is nothing unjust from the god's point of view. The distinction between just and unjust things is of human origin. It is due

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[xvi] *Ancilla*, 28.
[xvii] The tape was changed at this point.
[xviii] In original: (*Nomos*)"
[xix] *Ancilla*, 27.
[xx] In original: (*Nomos*)"
[xxi] *Ancilla*, 32.
[xxii] *Ancilla*, 31.

to human holding. It is by *nomos*. Differently stated, the distinction between just and unjust things is a partial truth which has meaning only for men. It is meaningful only within a limited human conduct. He does not explain that anymore and we have to think [it] out for ourselves. How can he have meant it? Men live in cities. The *polis* is *the* social unit, and the *polis* as this or that *polis* wages war. Now it is not possible to distinguish in principle between just and unjust wars. This very fact reflects on all other distinctions between just or unjust which are meaningful within a limited context, but not simply. Think, for example, of what killing, lying, robbing and so on mean in peacetime on the one hand, and wartime on the other. We leave it at that.

So we have—we cannot say more than this, that we have in Heraclitus a notion that all human laws are grounded in a divine law, but that this divine law is not directly the origin of the distinction between just and unjust. It came only indirectly, only via man. We cannot say more than that. I refer you to a few more fragments, because we cannot possibly read everything else: in Democritus, fragments 267 and 278, and in Gorgias, fragments 6 and 11. A most important source for—we have very little of the pre-Socratic teachings regarding this question—is the relatively recently discovered fragment 44 of Antiphon.[xxiii] Now Antiphon takes the view explicitly that all laws are mere [conventions], that there is no natural right, that what nature dictates has nothing to do with right and wrong. Roughly, what is for man good by nature is good for him regardless of whether it is observed by other human beings or not. For example, if you eat poison or drink too much you suffer the harm regardless of whether anyone else sees you or not, but if you steal or kill you do not suffer harm, according to Antiphon, unless you are detected. Since the bad effects of justice depend on detection, on being known, on being observed, the effects are not natural but only by virtue of convention. This he develops at great length. It might be useful for you to read it.

One word about a very famous school prior to Socrates, the so-called Pythagoreans. We have here Aristotle's report.[xxiv] And the Pythagoreans taught—whatever that may mean; I simply state it—that the essence of being is number, and according to them a certain character of numbers is justice, which would clearly mean that justice is natural. This is of no very great help to us. It only illustrates the general assertion that the discussion of whether justice is by nature or by convention was discussed long before Socrates and both answers can be discerned. I would rather right now turn to a phenomenon which is always discussed when the question of natural right comes up, and that are the so-called sophists.

Now they are in the center of discussion for the simple reason, because there are so relatively long reports in certain Platonic dialogues and, so to speak, everyone reads them and so they are of course very well known. Now what are they, the sophists? When we use the name we imply that they are not simply philosophers. Now they were men who educated human beings for pay, and this was regarded as something most ungentlemanly. They claimed to teach the human excellence, human or political excellence, and to possess the art of teaching it. I will give you a very brief survey of one discussion which occurs in Plato's dialogue *Protagoras*. A young man from a wealthy family, Hippocrates, wishes to become a pupil of Protagoras—who is not an

[xxiii] See *Antiphon the Sophist: The Fragments*, ed., with introduction, translation and commentary by Gerard J. Penrick (New York: Cambridge University Press, 2002), 159-69.
[xxiv] For a collection of the passages in Aristotle referring to the Pythagoreans, see *The First Philosophers of Greece*, ed. and trans. Arthur Fairbanks (New York: Charles Scribner's Sons, 1898), 134-43.

Athenian but happens to be there for some performance—who wishes to become a pupil because Protagoras is most clever at speaking, and Protagoras is known as a sophist. Naturally, a young man from a good family, like Hippocrates, does not study under him in order to become a sophist. This is an undignified profession. A sophist makes one clever at speaking. He seems to be a merchant, wholesale or retail, of food for the soul. He sells food for the soul. Protagoras himself says that what he teaches is to be prudent regarding the best administrations of one's household and to make a man as able as possible to manage the affairs of the city in speech and in deed. Other sophists, as he indicates, teach reckoning, astronomy, geometry, and music. He himself does not do that.Socrates restates the claim of Protagoras as follows: Protagoras possesses the political art or science, the political art or science meaning here the art of making men good politicians, and that he promises to make men good citizens.

Now on the basis of Socrates's and Plato's critique, the sophist came to mean a man of sham wisdom in opposition to genuine wisdom. This is most clearly stated in Plato's dialogue *Gorgias*. At any rate, the sophists seem to have been the first men who claimed to possess the political art or science without being themselves politically active men: the first academic professors of political science. But they did not teach that art. That art enabled them to make men good citizens, able citizens, good statesmen, especially able to speak. This implies that they must have had some understanding of political things. Some political doctrine must have been underlying their activity.

The best report we have on that occurs at the end of Aristotle's *Ethics*. The sophists claimed to teach the political things, Aristotle says. They claimed to possess the art of legislation, how to make laws, but they failed completely. They know nothing about these things, Aristotle says. First, they identify the political art with rhetoric or even subordinate it to rhetoric; and secondly, they say it is easy to legislate: you merely collect the famous laws and then you pick from them the best. Now what does that mean? They say [that] out from the most renowned laws, the laws recommended by praise, by *doxa*, by opinion, they collect the renowned laws and select from them by standards commonly admitted. There are no other standards. This would imply there is nothing by nature right regarding their standards, and this thesis seems to be indeed the case. Somehow they seem to have assumed that what is by nature good is the pleasant, and following that—at least that is Socrates's contention—they were led to the conclusion that the best life is the life of the tyrant, because the tyrant can have every enjoyment he wishes. But more generally stated, because not everyone can become a tyrant, or even if he is of tyrannical timber the situation may be most unfavorable for him, the exploitation of the common good, the common, for one's private use [is possible], and the means for that is of course a certain kind of rhetoric, up to the present day. You do not see Mr. Accardo[xxv] without seeing at the same time his lawyer with him. I mean, forensic rhetoric in case of detection is absolutely necessary if you pursue your own concern without any regard to the law, or, differently stated, if you are bent on exploiting the city for your private purposes.

But it would be unfair to consider only this quasi-criminal implication of sophistry, although one must not deny it. There is also another side. Xenophon, the other famous pupil Socrates apart from Plato, gives the following account of the pupil of the sophist [15]Gorgias, a man called Proxenus, a friend of Xenophon. Now here Xenophon is the pupil of Socrates and Proxenus is

[xxv] Tony Accardo (1906-1992), a mafia boss in Chicago.

the pupil of Gorgias. Now Proxenus, the pupil of Gorgias, was very good at ruling gentlemen, who can be ruled by praise and blame, i.e., by speech, by rhetoric, and rhetoric he learned from Gorgias. But Proxenus was absolutely unable to rule the many, who cannot be ruled by praise and blame, who need coercion. This fully agrees with what Aristotle indicates at the end of his *Ethics*. The sophists were not aware of the difficulty of politics. They were not aware sufficiently of men's recalcitrance to speeches. They were not serious. They did not understand the seriousness of politics. No greater mistake can be committed than to identify the sophist with Machiavelli. Machiavelli knew these difficulties very well.

The most important point for us is this: that generally speaking, the sophists did teach there is nothing right by nature, and it is surely confirmed by Plato's dialogue *Protagoras*, and the *Theaetetus*, which is connected quite obviously with the *Protagoras*. The *Protagoras* develops the following myth: man was formed within the earth by Epimetheus, the brother of Prometheus. Epimetheus means "thinking afterward," not thinking prior to production. Man was formed by nonrational activity; and hence ,of course, he's very poor off by nature. He needs arts. Without arts man is the poorest of all creatures. These arts however are not gifts of gods, as the myth says, but they had to be stolen by Prometheus. In other words, man saved himself only by a rebellion against the gods. Only dissatisfaction with his nature makes human life possible. That comes very close to certain modern notions. I refer you also to the first book of Plato's *Republic*, where Thrasymachus almost says that the human body is by nature bad and becomes good only through the art of medicine. But still, this is not enough, to have arts, because men must live together. A third thing is needed: justice, which enables men to live together. This is presented as the gift of Zeus, but in the context this means justice is strictly conventional. It does not depend on art in any way, on instruction proper, but merely on praise and blame and, last but not least, punishments. In other words, justice is only by virtue of social conditioning, in modern language. It is not by nature or by art. This view is questionable only on one very minor ground. In Plato's dialogue *Protagoras* one sophist, Hippias, says: "You all here are kindred and fellow citizens by nature, not by *nomos*, for you are by nature similar. The *nomos* acts in many respects violently against nature."[xxvi] Now what does he mean by that? Why are those present—he doesn't say all men are kindred; he says all those present here. They are kindred because they know the nature of things or because they are wise men. The only natural society is the community of the wise. Here some natural right is recognized, but the thought is not elaborated enough so that we can draw any further conclusions from it.

The sophists, I would venture to say, are not philosophers, not genuine philosophers. We have today a word which characterizes them very well: they are intellectuals. Now naturally the concept "intellectual," which is used rather uncritically, is a bureaucratic or Marxist conception; and I do not doubt that within these contexts it is a very meaningful one, but whether it is meaningful without that is a long question.[16] In a former lecture I said the characteristic of the intellectual is that you cannot distinguish, as you can in the case of the physician, for example, between a genuine physician and fake physician: you cannot distinguish between a genuine intellectual and a fake intellectual. That seems to indicate the difficulty. But then I have read in a column of a British columnist [. . .][xxvii] I believe is his name, who spoke of certain bogus intellectuals. So I probably have to reconsider this, although he didn't tell us what his criterion

[xxvi] *Protagoras* 337c.
[xxvii] The transcript has a blank space here.

was by which one distinguishes the true [intellectual]. Perhaps the bogus intellectual is a man who pretends to read books without ever reading them—you know, appears to. I do not know. He didn't define it. For the time being we leave it at this weasel word. Yes.

I think it would be unwise to go over now to Socrates. I would only like to mention one point. This Hippias who is presented by Plato as a very foolish, the most unintelligent sophist, occurs in a conversation with Socrates in Xenophon's *Memorabilia*, book 4, chapter 4, and this dialogue deserves a brief report. Socrates asserts there that the just is identical with the legal. Justice consists in obedience to the laws of the city, i.e., to laws made by the citizen body assembled. Hippias says that these laws cannot be something very respectable, since they are very frequently changed by the very men who voted for them. In other words, his implication is [that] justice is not something very great because it is of such a dubious origin, but eventually he accepts Socrates's assertion that this exactly is virtue. Then Socrates suddenly brings up the question of unwritten laws. Now unwritten laws are in a way higher laws, but they are not necessarily natural laws.

Let us see what this means here. Laws which are held in every land by all men; hence they cannot possibly be of human origin, since the whole human race never assembled in order to establish any laws. Hippias asserts that these laws would stem from the gods, for it is the first law everywhere to worship gods. Socrates says: Then what about the law of honoring parents? Hippias also agrees. So this is another law of these unwritten laws. Socrates: What about incest between parents and children? Hippias denies this on the ground that men do commit incest and hence it is possible; hence it is natural; whereas he implies men do not fail to worship the gods or to honor their parents. Yet Socrates says people commit other crimes against the laws laid down by the gods and they are punished for that by the gods. What then is the punishment for incest between parents and children? Answer: inferior offspring, because generation doesn't take place in these cases while both generators are at their peak. This argument—that is not said—implies that incest between brothers and sisters is an entirely different case. Incest between brothers and sisters has a very different status, and if we draw the final conclusion, incest between brothers and sisters is permitted. Have you ever heard this view presented elsewhere in this neighborhood here? No, I mean in this historical neighborhood. Well, that's exactly the teaching of Plato's *Republic*. In Plato's *Republic* there is a prohibition against incest between parents and children, but not within the same generation.

Socrates further speaks of the law to be grateful, to requite benefits. This is also a law which carries—the transgression of which carries its punishment with itself. If one does not requite benefits one will be punished by loss of all friends. Hippias thereupon says [that] these look indeed like divine laws because transgression carries with it punishment. The punishment does not have to be inflicted by human beings. The punishment is self-enforcing. This would seem to be some rudimentary notion of a natural law.

Yes, I must now turn to Socrates and Plato, but it is not practical to begin that now. Let us use the short time we have for discussion. The main point which I wished to make today was this, that we have sufficient evidence to say that both the assertion of natural right and the denial of natural right occur prior to Socrates. But the evidence we have is not sufficient to present

developed doctrines of this kind. The first developed doctrines we have are however Plato's and Aristotle's. Yes?

Student: Am I correct in supposing that you propose natural right as a subset of natural law? That is to say, natural right is those natural laws which have to do with matters of the good as opposed to matters of the self?

LS: Well, what I'm trying to do is something much more simple. First, to give you, I hope, a true and clear presentation of what the most famous teachers of natural right said about it. I mean, what one of you said, there is this very great variety of opinions regarding natural right—I mean even those who assert some natural right disagree very much among themselves. But first, what precisely is the issue? I mean, the mere general remark, "they disagree," is not very enlightening. Is there not a very definite issue? I would like to bring this to your attention and that is the primary purpose of this course, because what you learn today from the textbooks is simply not only insufficient but simply misleading, fundamentally, because natural right is not taken seriously, is regarded as a merely historical thing,[17] a doctrine which was very powerful in the past and which is not properly studied. I mean, occasionally I will engage in some polemics against certain historians. For example, if you take the famous work of [the] Carlyles,[xxviii] six volumes worth, you get the impression that—and the same things were done by McIlwain in his book, *Growth of Political Thought in the West*,[xxix]—you get the impression that natural right, natural law, that comes up with the so-called Stoics, i.e., after Aristotle, and plays a very great role until John Locke or Tom Paine more or less, and no serious change occurs; fundamentally it's the same tradition. You know? And this is a very wrong statement. What they say reflects the truth in a dim manner. I wish to make this as clear and exact as I can do it in a lecture course. Yes?

Student: [. . .]

LS: Yes. Well, can you describe this more fully?

Student: Well, don't the gods influence nature . . .

LS: Yes, this is this oldest Homeric passage, and then we would have to go into an infinite question: What is the status of the gods in Homer? Which I can only state as a question, and that's all I will say about it. Now if we speak of the philosophers, the situation is somewhat different. We have of course the pre-Socratic philosophers, where we have fragments and where always difficulties arise. But still, on the basis of your own thinking, how would you say how the situation was? I mean, speaking about gods, the first question would be, I take it: What is a god? Would this not be necessary? [18]For example, Zeus is the father of Hermes[19]. What does this mean? Is he a being who generated with some female god other gods? Do they accept that? I mean, "Do the philosophers accept that?" would be a question. Very generally stated, the gods become of course a problem on this basis altogether, and the simplest statement which one can

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[xxviii] R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* [1903] (Edinburgh, London: Blackwood, 1962).
[xxix] Charles Howard McIlwain, *The Growth of Political Thought in the West, from the Greeks to the End of the Middle Ages* (New York: Macmillan, 1932).

make about this is the following one: that on the basis of philosophy there appeared the necessity of proving that there are gods. Prior to philosophy this necessity didn't exist; and in Plato and Aristotle you find such proofs: an ascent from what we see, from the natural phenomena, including man, to gods. But these gods are no longer Zeus or Apollo, although they still speak of them—I mean, of the Olympian gods. Is this of any help? No, but the other question is this: Is there any relation between natural right, natural law, and gods? That is what you mean. We must see.

Student: . . . there is this connection . . .

LS: Sure. Well, that is a very long question, whether there is any direct connection between Aristotle's unmoved mover and what he says about natural right. That would be a question.

Student: I was wondering about why all of a sudden there was a need to justify nature—

LS: Not justify. To discover it! Do you think you would—

Student: [. . .]

LS: No, that there is such a thing as nature. We wouldn't sit here—there would be no physics department and what they do, without some man or men at some time having become aware of the fact, or perhaps the possibility, that there is such a thing as nature. I repeat what I said at the beginning: man does not know by nature that there is nature. When you claim you know nature, then you know it because you have been told that there is nature. That is all. You hear it already when you are five years old, or perhaps earlier today, but this was not so at all times. Our physics, the very word, indicates—that's derivative from *physis*. I mean, you must have had some warning also in other classes that one must not be thoughtless or, as they sometimes put it, that one must be exact. One cannot take these things for granted. Infinite implications are involved in this very notion of nature. Someone has said very rightly that when the Greeks spoke of natural science the emphasis was absolutely on nature: the science which reveals nature. Today when people speak of natural science the emphasis is entirely on science, and so much so that when people speak today of science it means natural science. So much has it become a matter of course; so much has this great premise of all Western thought become overlaid by much later and much more ephemeral developments. Now no one can be forced, of course—this is a free country—to think about these matters, but I believe it's the duty of people like myself and others to make clear that if one does not think about them, one simply speaks constantly not only without understanding what one is talking about but without having an inkling that there should be a difficulty of finding out what one is talking about. Yes?

Student: The distinction between nature and *nomos* is much the same as the distinction between reality and appearance.

LS: No, "reality" is not a Greek word. So I mean that arises under entirely different circumstances . . . but if you say truth and appearance it would be somewhat different. No, but are not chairs as truly as dogs? And are not, in a way, the *nomoi*—which is the plural of *nomos*—as truly as dogs? No, surely not the same as the distinction. I mean, if you want to have a modern

equivalent which is never quite correct but which can be helpful, I would say *nomos* in the philosophic sense of the term is something like what now is called a *Weltanschauung* or what might now be called an authoritative opinion: that to which a society is dedicated without examining it, and[20] as a society, being unable to examine it. And such things exist everywhere. It is one of the empirical assertions of our present-day social science, at least of a part of it, that a society does not have to be dedicated to something. Yes? Does not have to be dedicated to something. I mean, some people, of course [some] of [the] social scientists say there are always values, but this is a very dubious interpretation of what—I mean, a very dubious and questionable interpretation of what kind of things, to what kind of things a society is dedicated. But every society: I think we will find, if we look around, that it is dedicated to something, that it regards something as worth looking up to. Worth looking up to. If you take this most simple understanding of our present society, such things as freedom and equality are such things, things everywhere people are at least presumed to look up to. And the modern social scientist says he, as a social scientist, does not look up to anything, whereas the former philosophers said also the philosophers must look up to something as philosophers which is not necessarily the same as what that society looks up to. That is, in a way, the question of nature: What is that which is by nature of such a character that man must look up to it? Nature as merely material for human uses and nothing else is a very special interpretation of nature which in this form emerged in modern times. In premodern times, and to some extent even now—up to now the view is that nature gives us also directives and is not merely material, and especially human nature. I mean, the whole modern process came underway on the basis of the assumption that there are natural purposes of man, and that these natural purposes of man require for their best fulfillment a new kind of study of nature: the modern natural science. And then from a certain moment on, and this is of course practically important up to the present day—I mean, all utilitarianism still is based fundamentally on this view whether it admits this or not. When people speak of the underdeveloped nations today and what should be done to them, a decent standard of living regarding health, food, housing, and so, there is still a notion of what is by nature good for man as man, varying according to climate and other things—that goes without saying—but fundamentally the standards were there. And only in the last fifty years has this notion become rejected, and therefore there is no longer a clear answer possible [to the question], What is the meaning of science? That is of what I spoke at the beginning of this course. Yes?

Student: [Question as to whether the concept of nature is or is not necessarily dependent upon God.][xxx]

LS: Yes. Well, that is very difficult. I mean, I have to take up this question, by all means. Well, there is a famous statement, you know, in the seventeenth century by Grotius. Some people say that's the beginning of the modern development, which I believe is not true. Grotius says there would be natural law even if there were no God.[xxxi] Have you never heard that? The quotation is very famous. Yes, but the question is—that is a long question: What does God mean for a thinker like Aristotle or Plato? That is a great question and therefore one must see, must study that. Mr. Butterworth?

[xxx] As noted by the transcriber.
[xxxi] Hugo Grotius, Prolegomena, *Rights of War and Peace* (1625).

Mr. Butterworth: I have trouble in following the reconciliation that you made between these two statements of Heraclitus. In one he says that for god all things are just and beautiful and good, and the other one where he says that the law, *nomos*, comes down from one divine law. There seems to be a tension and I don't understand just how—

LS: Yes. There is no evidence. The only glimmer of an example is the reference to the distinction between free men and slaves in this fragment which you read. It seems that the distinction between free men and slaves has an entirely different status than the distinction between gods and men, whatever gods may have meant for Heraclitus, and I would say it has also an entirely different status than the distinction, say, between men and dogs, meaning here slavery is a human institution by virtue of which prisoners of war are made slaves. In this sense war is the cause of the difference between free men and slaves. But this human war which establishes the manmade distinction between free men and slaves is only a kind of image of the whole in which something which can be called war—say, antagonisms, say, conflict of opposites—brings about every thing which is brought about by nature. So that insofar as this cosmic process—let me use this word, the cosmic process—brings about man it is indirectly the cause of the distinction between right and wrong as a human distinction. Man as man is not thinkable without that distinction. He originates that distinction. That I think he means. But this originating the distinction is not entirely arbitrary; and therefore its being not entirely arbitrary points to some higher principle: what he calls the divine law, which is obviously not a moral law. This much is perfectly clear because for god, he says, there is no distinction. Everything is just. So next time I will turn to Plato, to Plato's doctrine of natural right.

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[1] Deleted "in"
[2] Deleted "we"
[3] Deleted "that is"
[4] Deleted "for."
[5] Deleted "Student: Yes. LS: Oh, good enough, sure, fine."
[6] Deleted "this is—."
[7] Deleted "your—."
[8] Deleted "known"
[9] Deleted "to be an abominable"
[10] Deleted "but without—no."
[11] Deleted "are completely—."
[12] Deleted "That is not—."
[13] Deleted "and measured and quenched."
[14] Deleted "he says"
[15] Deleted "of."
[16] Deleted "So we leave it at that because I have seen—."
[17] Deleted "you know."
[18] Deleted "I mean."
[19] Deleted "for example"
[20] Deleted "without as a society being unable"

Session 6: October 24, 1962

Leo Strauss: [In progress] —let[1] [me] limit myself to this restatement of the classical view, and not only of men like Plato and Aristotle but also of their opponents as well, and it takes on significance only if you contrast it with an alternative. The alternative would be that the things which are not always are more truly than the things which are always, i.e., that the highest things may be only momentary, ephemeral or rarely. Now if you take a view, for example, like a certain kind of modern materialism, which would say [that] what is always is moved matter, but man is only for a very short time, a few billion years, and the highest possibilities of men are achieved only in the lifetimes of very few human beings. That would be the opposite. Yes? This I wanted to make clear.

Now the difficulty which you have is this.[i] I mentioned also that there is a fundamental premise that no being emerges without a cause. That is indeed—was always presupposed, and the great difficulty in modern thought is due to what happened to the so-called principle of causality. You know? And the question is whether the present-day substitute for that, that the principle of causality is a mere assumption or something of this kind, is good enough, whether this does not endanger the very notion of science. The assumption [is that] the cause of a being is another being, you said. Well, but when a being emerges which was not before, can that being which emerges have produced itself?

Student: Are you thinking of the emergence of man and then some form of being that exists—

LS: No, but in general, if any being emerges, can that emerging being be the cause of its own emergence? That is the question, and you seem to say that or to regard it as possible. Now there were some men who spoke of a *causa sui*, of a cause of itself, especially Spinoza and to some extent also Descartes, but the question is whether they meant it that way which you mean it. When Spinoza speaks of one substance, that it is the cause of itself, it means that no cause outside of it can be appealed to. He doesn't mean that it brings itself into being, because it is meant to be always. Yes, this is all I can say at this time. The fundamental question which is implied and which is in no way settled by what I said in class or in that book is the fundamental question of causality, and that is indeed in my opinion the basic issue of philosophy altogether. And it has become that basic issue at least since the time of Hume, but the solutions which are offered today by virtue of positivism in particular are no solutions.

Now I turn to the other question, which is much more extensive, by Mr. Vernoff which was given to me. This is four and a half pages—no, three and a half pages, single spaced, and it is too long to discuss every point, so I can only bring up the main point. It was very good, interesting for me to read that because it shows how very difficult it is to make oneself understood. I mean, I say this without any criticism because—without any bad intent, of course. But I must say you have not understood the meaning of my whole argument, and since I'm sure you were not the only one, I'm grateful to you that you give me an opportunity to make this clear. I read the beginning. "It is suggested that as human beings everyone has in common at least the biological

[i] Strauss responds to student questions submitted in writing.

givens of the species, the heavens above, and the earth under his feet. That is, in virtue of our common astronomical, geological and biological heritage, we might expect to discover some fixed norm, some universe of discourse we can share with all other men upon which our common immutable conditions of being bestows true ultimacy. From this ultimate norm, then, we might derive the natural, i.e., inherent in our nature, right of mankind. How are we to construe these assertions?" And so on.

Now as I say, of course I never made any suggestions of this kind. Science cannot be the basis of ethics. More precisely, modern science cannot be the basis of ethics; that I never question for any moment. And any argument based on that is of course—doesn't meet the issue. But the question which I raised is: Is science, by which we then always mean modern science, the way to truth? Our science makes specific premises which in application to man are quite visible: the understanding of the higher in terms of the lower. Think of "evolution": the human kind, the human species, has an origin. It originates in lower things, apes and so on and so on and so on. The human species is understood in the light of its antecedents. The question: Is the human nature properly understood if it is understood in the light of its antecedents? That's one way of putting it. My argument, as I presented it, presupposes the questioning of modern science as a whole, not of this or that particular result but of its ultimate validity, and I tried to show that there is a way leading from the acceptance of modern science as *the* way to *the* truth to radical historicism. From the point of view of radical historicism, modern science is one manner of understanding the whole not intrinsically superior to any other. And on the basis of radical historicism the question arises: Is there no genuine common ground for all men as men? On the basis of this whole question, that common ground cannot be sought in science until one establishes that modern science is *the* perfection of the human understanding. But this is an open question, this part of the argument.

Now the questionable character of science can be shown very simply as follows, and I believe in doing so I do not deviate from what Mr. Vernoff has in mind. Modern science stands and falls by the exclusion of miracles. For example, when a question like the age of the world or the origin of man or any other question is raised, it must have a natural origin. Now if we knew that miracles are impossible, this exclusion would be categorical, i.e., not hypothetical. But our science can never say that miracles are impossible; it can only say that science has no way of knowing them. So if miracles are not impossible, the exclusion of miracles can only be hypothetical, and therewith also everything said about the origin of man and so on and so on. But even if we grant that everything modern science teaches regarding heaven and earth, the human digestion, and whatnot, this would still permit us to wonder whether what it teaches about the specifically human is adequate: whether it is equally competent regarding the human in man as it is regarding inanimate bodies, for example, and also, say, human digestion. I indicated this in the following way. Granted that modern science is much more competent than common sense is regarding things where telescopic or microscopic knowledge is superior to macroscopic knowledge, and obviously regarding the heavenly things the telescope is better than the unarmed eye; the same applies also to things regarding microscopic knowledge. But regarding man and human conduct and this kind of thing, it is by no means evident that the macroscopic knowledge we acquire in life of men and human conduct should be inferior to any specifically scientific knowledge.

I would like to make one or two more remarks about Mr. Vernoff's paper. I cannot enter in every point. He says then, "Applying this to the supra-individual of the cultural organism . . . " That's only one example among many. But who spoke of cultural organisms? How do we know that there are cultural organisms? That this is a thing today admitted and used by sociology and other parts of social science is of course not a sufficient justification. We must go much deeper and see how these things now called cultural organism would have to be called properly. All kinds of premises are involved which we cannot accept without examination. In other words, the argument of Mr. Vernoff is based on the simple acceptance of concepts and theories now generally accepted, and this is of course in a way very practical and very convenient but it is not adequate enough when we are confronted with the question whether our now prevailing scientific orientation is as such adequate.

Let me see. Now also here this point: "The question which we would have to discuss beyond all these preliminary questions, what is the meaning of life?" Yes, but I would raise the question: Is this truly a primary question? Does this question of the meaning of life in these terms not arise under very specific circumstances? When did people begin to speak of the meaning of life? As far as I can see, without having made any special study, sometime in the nineteenth century. Formerly people raised a different question: What is good? That's not exactly the same question as: What's the meaning of life? It's a much more natural question. When the prophet Micah says, "The Lord has told you what is good" and so on, it's an answer to what is good. That was also the question for Plato and Aristotle. That's a more primary, more elementary, more natural form of the question. Then you turn[2] over to the question of the Bible, and especially the Hebrew Bible, and you say for the Hebrew the question of God simply does not arise. "God simply is. The Hebrew who is a true son of his tribe can interpret this question only one way: by pointing at the condition of his existence." Now in a way you protected yourself by saying "the true son of his tribe," meaning if he is a pious Jew. But you cannot—not all Hebrews, even in biblical times, were pious. There is a song which begins, "The fool hath said in his heart there is no God." So obviously there must have been Hebrews who were not in this sense—so that it is not true to say that no one could possibly imagine. That is simply not correct. "What Descartes must needs approach through the devious roots of Hellenically informed reason"—I suppose you mean the existence of God—"was to the Hebrew the bread and butter of everyday life." Well, read the Old Testament and[3] read the stories of the almost constant backslidings where other gods, you know, Baal and [Astarte][ii] they were called, were recognized. That is not as simple as that.

Then you raise this question. "When we speak of human nature we mean, of course, this particular species which we know living on earth"—and what about—maybe there are thinking beings on other planets. Surely, who can exclude that without having been there? But this was always considered. There is a very nice short novel of Voltaire, *Micromégas*, where he discusses this possibility in a very interesting manner. This is of course in no way excluded. But we don't—since we know[4] thinking beings only as earthly beings, we have to start from that in any attempt to understand it. The conclusion which you arrive at and which is perfectly defensible: "the moral question," you say, "I'm afraid"—I do not know why you are afraid—"shades impossibly[iii] into the theological question." That can be defended, but if I understand you correctly you mean the only way to the really humanly important truth is divine revelation. That

[ii] The transcript has a blank space here.
[iii] In the transcript: "(?)"

has been said frequently by very great men, but of course one can also not accept this without wondering whether there is not something which we can know about man and his good by reason, by unassisted human reason. When Augustine spoke of the virtues of the pagans as splendid vices, he still did not deny that the conduct of Scipio or other great Romans was and deserved to be praised more highly than the conduct of a traitor or a corrupt individual. So even if it were theologically true that all natural virtues, all virtues arrived at by human means, are questionable in the last analysis, they are nevertheless of great importance for many practical purposes and one cannot simply reject this prior to examination.[5]

How shall I make now the transition to what I am dealing with now? In order to make it easier, take, if you wish, what I'm going to say as a simple exposition of what the greatest men of the past have taught of natural right. Now if you see difficulties, if you have the impression that they make assumptions which are dubious, by all means make this clear to yourself and if it's practicable even to the class, and we will do that, surely. But I said this before: in most present-day discussions of natural right the simple factual knowledge required is much too small. People who have [in] some way recollections of the Declaration of Independence and some sentences in Locke perhaps believe they understand what the issue is. That is not true. I would like to present the full issue within the limits of such a relatively short course.

Now last time I began to say that there cannot be any assertion of natural right if men are not aware of nature. Of something like right people are always aware, but not of nature. And this discovery of nature took place in Greece. Now what did nature mean in this original stage, which original stage includes Plato and Aristotle? Nature was understood in contradistinction to art and above all to *nomos*: *nomos*, which means law, custom, convention, authoritative opinion—you have your choice. Nature means primarily something like growth, [6]and especially the term of the growth: the quality a thing has when it has reached the term of its growth. Now regarding *nomos* one can say "convention," but one must understand it properly. That is by convention which is only by virtue of men's agreeing on it. For example, currency: dollars versus pounds, or that pieces of paper have a value that you can buy something. This is of course possible only by virtue of some agreement among human beings. Weights, measures, words: Why do we call this animal dog and not *hund* or [. . .][iv] or whatever word we take? That is not in the nature of things, but this is due to something like agreement. That was at least the Greek view of it.

On the basis of the distinction the question arose: Is there something right by nature or is all right due to human convention? Now, for example, right or left driving is obviously right only by virtue of convention or human legislation, but is this true of all right? Does it have no different status? Is it as arbitrary as whether you settle in favor of right or left driving? Now the view which asserts that all right is conventional I shall call conventionalism, and this was surely a very powerful school throughout the ages. And conventionalism asserts, then, that when we analyze any notion of right we arrive eventually at a mere fiat of the legislator, of society, however you call it. In other words, that all right, however high and sacred, ultimately has no higher status than driving left or driving right. Conventionalism is akin to but not identical with the relativism so-called now prevailing in the social sciences, because conventionalism asserts and takes for granted that there are things which are by nature good; for example, health, strength, and some other things. But they say while there are things which are by nature good there are none which

[iv] The transcript has a blank space here.

are by nature right, whereas social science relativism says there are also no things which are by nature good, as we have heard last time some of you say.

It is also necessary for the understanding of conventionalism to consider another modern view which is practically indistinguishable from social science positivism but which is in its thesis distinguishable, and that is what they call naturalism. Naturalism asserts that everything that is or happens is natural, whereas conventionalism asserts: No, not everything that is or happens is natural; some things are merely conventional. Let us try to understand that. Now the present-day naturalist would perhaps argue as follows. Is not every notion of right or every value system the natural product of a given society and hence as natural as an apple—as, so to speak, a product of the apple tree? For example, of the climate, the mode of production, the state of knowledge in that particular society, and so on. This was indeed a quite common view in the not too distant past. Such a work like Montesquieu's *Spirit of Laws* makes the attempt to show that the various notions of right are all due to natural causes. For example, if you find polygamy in the East and monogamy in the West, Montesquieu tried to show how this is connected with the climate and so on of these particular societies. But this is no longer the prevalent view in our social sciences. I have referred before to Ruth Benedict's *Patterns of Culture*,[v] a book which I haven't read for twelve years, so if I make a mistake you will tell me. She took the case of these two Northern American Indian tribes where the climate and everything else, the race and all this were exactly the same, and yet the value systems of the two tribes were radically different. The value systems could not be traced to any natural cause. In other words, what we arrive at ultimately in analyzing a value system is an irreducible choice, not reducible to any natural conditions.

Now this is however not a specialty of Ruth Benedict, and perhaps a special mistake of hers, but it is fundamentally underlying social science relativism, as I believe one can show in this manner. Let us assume that any value system, alpha, is fully conditioned by social characteristics A or for that matter, more seriously, if any ought you find anywhere is the necessary outcome of an is, A, then the whole situation as we know it in the social sciences wouldn't exist. The assumption underlying present-day positivism is that any A, any state of an individual or of a society, is compatible with a great variety of values: alpha, beta, gamma, and so on, and therefore there is something like an irreducible, inexplicable choice. This is fundamentally the same [as] what the Greeks meant, the Greek conventionalists especially meant by their view, only this is no longer called *nomos* or convention. But the term which would now be used would be something like historical decision, and I think one can say that we do not understand any more the Greek notion of *nomos,* because its place has been taken by History with a capital "H."

Now I explained last time that at the very beginning of Greek philosophy, prior to Socrates, both views—the view that there is nothing which is by nature right and the view that there are things which are by nature right—were developed. But it is of no use to dwell on it because we know so little about it. We have to depend on fragments. There is one fragment to which I referred, a conventionalist fragment which might be of interest to you because it in many ways sounds to be very modern. And that is a remark of the sophist Antiphon, which I will find out from Mr. Butterworth and he will be so good to read it slowly to the class—if you come here and permit me only to find it in the text to make the indispensable corrections. This has been discovered

[v] Ruth Benedict, *Patterns of Culture* (Boston: Houghton Mifflin, 1934).

only about three decades ago from papyrae. It is very fragmentary and contains quite a few illegibilities, but still something emerges, and let us read that.

Mr. Butterworth: "Justice, then, is not to transgress that which is the law of the city in which one is a citizen. A man, therefore, can best conduct himself in harmony with justice if, when in the company of witnesses, he upholds the laws, and when alone without witnesses he upholds the edicts of nature."[vi]

LS: Yes, this is of course not a correct translation, the last point: "If he upholds that which stems from nature." In other words, "edicts of nature" is not a correct translation, a wholly unnecessary translation. But do you get it? Justice means legality, and legality means to obey the laws of the city. If someone would transgress the laws of the city he would be extremely foolish because jail, gallows, and other unpleasantnesses would follow. But if he is alone, i.e., if there are no witnesses, he will [. . .] very well transgression and should do what nature prompts him to do. Yes?

Mr. Butterworth: "For the edicts of the laws are imposed artificially, but those of nature are compulsory."

LS: Again, "edicts" is not necessary. "The things of nature are necessary." Yes. Now what does that mean? Go on.

Mr. Butterworth: "And the edicts of the laws are arrived at by consent, not by natural rule, whereas those of nature are not a matter of consent."

LS: So in other words, whatever the law forbids, say, not to steal or any other things, is merely a matter of agreement among the citizens in one way or the other, whereas the things which nature prompts us to do are not based on any human agreement but are necessary, as he puts it. The question is: How can one nevertheless act against that, what is necessary? That has to be explained. Yes?

Mr. Butterworth: "So if a man transgresses the legal code he evades those who have agreed to these edicts, he avoids both disgrace and penalty; otherwise not. But if a man violates against possibility any of the laws which are implanted in nature—"

LS: Yes, this is also—I mean, "laws" is not here. "The things," all right, "which have grown up together with nature." Yes?

Mr. Butterworth: "even if he evades all men's detection the ill is no less, and even if all see it is no greater."

[vi] It is not clear what translation Mr. Butterworth is reading from. See, however, *Antiphon the Sophist: The Fragments*, ed. with introduction, translation and commentary by Gerard J. Pendrick (New York: Cambridge University Press, 2002). The fragment read is F44(a), and it appears in Greek and in English translation at 159-69.

LS: In other words, what nature prompts us to do: if we do not do that, we suffer from it whether other people see us or not. The simple example is intoxication for someone who cannot stand it. He will suffer from it whether he has witnesses or not. But if he steals or murders even and there are not witnesses, he can get away with it easily. Yes?

Mr. Butterworth: "For he is not hurt on account of an opinion, but because of truth."

LS: You see, the opinion and *nomos* belong together, and nature and truth belong together. Yes?

Mr. Butterworth: "The examination of these things is in general for this reason: that the majority of just acts according to law are prescribed contrary to nature, for there is legislation about the eyes, what they must see and what not, and about the ears, what they must hear and what not, and about the tongue, what it must speak and what not."

LS: You see, in other words, law is truly comprehensive. I mean, there are laws forbidding to see certain things. We cannot understand it immediately on the basis of our notion of law, but there are some unwritten laws even today, some things you are not supposed to see and surely to speak. Yes?

Mr. Butterworth: "And about the hands, what they must do and what not, and about the feet, where they must go and where not. Now the law's provisions are in no way more agreeable to nature and more akin than the law's injunctions, but life belongs to nature and death too and life for them is derived from advantages and death from disadvantages."

LS: In other words, these are natural goods. That hemlock kills you, this is not a legal enactment. That follows necessarily. But being hung for murder is not a natural consequence. It comes about only by virtue of detection, witnesses and so on. Yes?

Mr. Butterworth: "And advantages laid down by the laws are chains upon nature, but those laid down by nature are free, so that the things which hurt according to true reason do not benefit nature more than those which delight, and things which grieve are not more advantageous than those which please. For things truly advantageous must not really harm but must benefit. The naturally advantageous things, from among these—"

LS: Yes, there are—I see. Yes, lacunae. Well, now let us leave it at that. So of course Antiphon must show that the things imposed by law, by convention, are harmful, and that he does in the sequel. We cannot read that. It is sufficient for us—the argument is developed in another way by Glaucon in the second book of the *Republic* and by Callicles in Plato's *Gorgias*. I will speak of that later. This in the way of an illustration of the conventionalist view. Unless there is a question regarding this particular point—let us not now open the whole issue of positivism and historicism because otherwise we will not make any headway. Is there any difficulty regarding the understanding of conventionalism? Because it is in some respect indeed akin to what positivism or social science relativism teaches now, but it is also different. If there is any difficulty on that ground, I would like to clear it up. Yes?

Student: . . . what is just is an attribute of *nomos* and what is good is an attribute of nature.

LS: You can put it this way. There are things which are by nature good. For example, take tuberculosis [which] is by nature bad. It ruins the human body, doesn't it? And this kind of thing. But theft is not by nature bad. Theft is bad only in virtue of human enactment, and as is shown by the fact that this is operative only if enforced by human beings. Things which are by nature good are good without any human intervention. Is this clear to this point? Yes. But to repeat, the characteristic difference between conventionalism and the view now prevailing is that conventionalism admits that there are things which are by nature good.

Student: Which modern science does not?

LS: Yes. Well, they would say, as one of you said last time, there are people who deny that health is a good. Yes? Or to go beyond that, you may choose death as your value as well as life. And the conventionalists say: That must be a crazy man. By nature he is prompted to live. Well, under certain conditions—if he lives in very great misery and so on he might prefer death to life, but not naturally, not in the normal case. And you wanted to say something?

Student: Well, the conventionalists have to [adhere][vii] to *nomos*. That is, do they approve of customs, then?

LS: Yes, as in a way inevitably they have to. Sure, but if you can circumvent it, which you can do only secretly—it is in a way a gangster morality. Yes, sure. Yes, but it can also be understood in a more lofty sense, but the gangster morality is the most simple illustration of it. Circumvent if you can safely do it. But this notion, this distinction between nature and convention has had a very powerful effect throughout the ages; in a concealed way up to the present day. For example, all the corrections and criticisms of so-called conventional morality, as they still say today, conventional morality. What does that mean? For example, the prohibition again incest, against homosexuality. You know, the whole problem of Kinsey.[viii] You know, this has to do with that. All these prohibitions are merely conventional, and that is a special form of it which is of course of great practical importance. Yes,

Student: It seems to me that the conventionalists are saying that nature is the [. . .] It's always been unhealthy if you go to jail—

LS: Yes, yes, sure. Yes, but only indirectly. It doesn't take place by nature. You can avoid it either if you are very clever, or in addition to being very clever you have a first-rate lawyer. You know, they all have lawyers, as you must know. Therefore the connection with rhetoric is so important. You know? When Aristotle and Plato suggest no conventionalism without rhetoric—surely, the rhetoric is the great assistance to make the law ineffective by seemingly legal means. Yes. Good.

[vii] The transcript has a blank space here.

[viii] Afred Kinsey (1894-1956), an American biologist whose research focused on human sexual behavior. He is author of the Kinsey Reports: *Sexual Behavior in the Human Male* (1948) and *Sexual Behavior in the Human Female* (1953).

Now let us then turn to Socrates, because in a sense the whole history of political philosophy proper begins with Socrates. Now what is the peculiarity of Socrates's teaching? Let us first listen to what Aristotle says about Socrates in his *Metaphysics*: Socrates is said to have been concerned only with *ethica*, with ethical things or, in Latin, moral things. May I mention the fact that there is no distinction between ethics and morals, [whereas] there is one in present-day American usage. You speak of an unethical drug store; and immorality seems to be more limited to sexual matters, if I understand the usage correctly. This is a vagary of present-day usage. "Moral" is simply the Latin translation of ethics. Now ethics is derived from the Greek word *ethos*, and *ethos* means character. I mean, ethics is the doctrine of human characters, which are of necessity either good or bad characters. So Socrates was concerned only with ethical things. Secondly, he raised the question of "What is the thing?" much more and much more radically than anyone else before him. And the third point, the "what" question leads to the definition. For example,"What is a dog?" The answer would be the definition of the dog. And the third point:[ix] in order to arrive at definition, Socrates used "induction." Induction does not quite mean the same which it means in [the] time of Bacon. Induction means simply by starting from a given phenomenon to which you can point. In other words, a single example might be sufficient; you do not have to have this kind of checking on which Bacon insisted and which plays such a great role in the present-day notion of induction.

Now the remark of Aristotle is made slightly more specific by what Cicero says in the fifth book of his *Tusculan Disputations*: "Socrates was the first man to bring down philosophy from heaven and he placed it in the cities and introduced it in the houses and compelled philosophy to inquire about life and manners and things good and bad."[x] In a word, Socrates was the first philosopher concerned exclusively or chiefly with human things or political things. This is more or less the same. Now Socrates could not have done this without clarity about the essential difference between the human or political things and the things which are not human or political. But one could say: Was such a clarity not already implied in the distinction between nature and convention? No, if the human things, good and bad, the right and wrong, the noble and base, are not simply conventional. So the distinction between the human things and the other things is a distinction within the natural things in the wider sense of the term, within the non-conventional things. Now Socrates surely asserted that there is an essential difference between political things and things which are not political, and this presupposes that he admitted and emphasized that there are essential differences. Essential differences. If I may use now a traditional term not used by Socrates, essential differences obviously presuppose essences. We can say—we have to qualify that later—Socrates is the discoverer of essences. Now what does this mean?

Again we have to look at the alternatives. The most simple alternative is to say all things are homogeneous. There are only quantitative differences, differences of more and less, among things. For instance, everything that is is a modification of moved matter. Its being is moved matter, but the moved matter called a dog and the moved matter called a star differ quantitatively, to be expressed in terms of physics and chemistry, for example. This is one alternative. The other alternative is to admit that there is a heterogeneity in things, but a sensual one. The doctrine of four elements where it is understood water is not fire and earth is not air and so on, but these are sensual heterogeneity. The heterogeneity which Socrates asserted is not

[ix] Presumably Strauss means the fourth point.
[x] Strauss's translation.

simply sensual, but let us call it a noetic heterogeneity in order to avoid the term intellectual. Noetic is only the Greek word for intellectual. Noetic heterogeneity. The whole consists of noetically heterogeneous parts. This is the view asserted for the first time by Socrates, and of course underlying Plato and Aristotle.

Student: [Asks that the last remarks be repeated][xi]

LS: The whole consists of noetically heterogeneous parts. That is the meaning of essentially different parts. Men are essentially different from dogs. Dogs are essentially different from cats, and they from stars and whatever else the beings may be. Socrates sought for that "what" a thing is that came later on to be called the essence, and he sought for it by induction. Induction means here by starting from what is given. Here, that dog here. Frequently a Socratic discussion begins, "Is there such a thing like courage?" And the other fellow says, "Yes." Well, then what is it? But that it is—it is the given—is the starting point. This givenness may also mean and shows itself primarily even in what is said about it. What is said about it; everyone admits that, and therefore the Socratic procedure could be called dialectics, dialectics meaning here the ascent from what is said ordinarily to what is true in these assertions. In many Platonic dialogues you find that. They start—for example, the *Republic*: justice is this and this; say, to return deposits is justice. And then Socrates shows: Well, that's not enough. There are obviously other acts which we call just and which are not returning deposits; for example, to abstain from killing, from murdering, is also a just act that's not covered by that. So gradually he ascends, and the task is to ascend step by step to the true definition which would tell us exactly and completely what justice is.

Now since our subject is natural right or natural law we will first raise the question: What did Socrates teach regarding natural law? Answer: We do not know, for the simple reason that Socrates did not write. But I said a lot of things about Socrates. Now, well, I based these statements on the report of Aristotle, and I regard Aristotle, until the contrary is proved, as a reliable reporter, and Aristotle says nothing about Socrates's teaching regarding natural law. Surely we know something about Socrates from his two greatest pupils, Plato and Xenophon, but there can always arise the question: Is this Socrates himself, or is this Socrates modified by Plato or Xenophon? Xenophon, to say a word about that, does not speak of natural law and natural right ever. There is a reference to something of this kind in the dialogue of Socrates and Hippias in *Memorabilia* 4.4, which I discussed last time. The only other reference is to a passage in his *Education of Cyrus*, in the seventh book, chapter five, section 73, where a reference is made to an eternal or sempiternal law among all human beings. This is however of no great help, because that law is to the effect that the victors take everything belonging to the vanquished. This is of course not said by Socrates or another gentle individual, but by the great conqueror, Cyrus, the founder of the Persian empire. So, as I said, we can dismiss that. We must turn to Plato.

Now what is the Platonic teaching, then, about natural law? The term natural law occurs, as far as I know, only twice in all Platonic writings. There is a passage in the *Timaeus*, 83e, where the speaker, the philosopher Timaeus, speaks of the natural law, and this refers to some fluids in the human body. This is not, obviously, what we have in mind. The other reference occurs in the dialogue *Gorgias*, 483e, where the following phrase occurs: "according to the nature of right and by Zeus, according to the law of nature." That is, I think, the statement; but this is not said by

[xi] As noted by the transcriber.

Socrates but by Callicles, and any one of you who has ever read the *Gorgias* knows that this cannot mean—cannot be natural law in the sense we seek it because Callicles's law of nature is the law of the stronger, the same thing of which Cyrus spoke in the passage of Xenophon. Plato's Socrates or any other respectable spokesman of Plato never uses the expression "natural law." Plato's Socrates does speak of what is by nature right, and this difference is of course of some importance. First we will only try to get the most relevant facts. The explanation must follow later.

Now I would like—since I used this term natural right in the title of a book, I indicated by this that I attach some importance to it. A critic made this suggestion: that this was due to my insufficient familiarity with the English tongue. I'm aware of that insufficiency, but it doesn't go quite so far, namely, in the continental languages, German, French, Italian, I suppose also Spanish, they speak of *Naturrecht*, *droit naturelle*, *diritto naturale*, and so on, [the] meaning [of] which, literally translated into English, would be "right," whereas in English people habitually speak of natural law. I knew that. All right, but I thought of something else. I thought of the older terminology which is no longer so visible in the English tongue but which is surely easily noticeable in Latin. What is called in Greek *dikaion*, *physei dikaion*, is in Latin translation *jus*, *jus naturale*. And what is *jus*? Not translated by "right." What [. . .][xii] that which is just. That which is just: this is the terminological meaning. And why people began to speak of rights of man in the eighteenth century—you know, rights of man, natural rights, and as distinguished from natural law—that is a very complicated question. It has nothing whatever to do with the difficulties and complications we find in premodern times. So I say there is a Platonic teaching regarding natural right.

Both Plato's Socrates and Plato's spokesman in the *Laws*, the Athenian Stranger, oppose explicitly the view that right is only conventional, as is asserted by other personages in the Platonic dialogues. Again, a few terminological points which are unfortunately—you will not even become aware of it if you read translations because these translators are extremely, well, how shall I say, irresponsible or kind, namely, in order to avoid, remove difficulties for the present-day reader they translate in present-day jargon of some kind. In other words, it's a kind action, but on the other hand it is of course irresponsible, because you never hear Plato: you hear only what you hear anyway. So the question of natural right is entirely different from the question of the nature of right or of justice. For example, in Glaucon's speech in the second book of the *Republic* the phrase occurs, "the nature of justice," in the sense of the coming in[to] being and character of justice. Even a conventionalist, of course, speaks of the nature of justice. He says the nature of justice is to be conventional. You know, that is one little difficulty. One can also speak, as Plato does elsewhere, of the natural definition of right. This has no other meaning than the true definition of currency, for example, where it is understood that currency is conventional. On the other hand, when such a phrase occurs like punishment according to nature—the Greek word for punishment is of the same root as the word for right [. . .] *dike*—the punishment according to nature which means to suffer what one has done. For example, if one has committed a crime against property, one should be punished in one's property; if one has killed a man one should be killed, and this kind of thing. None of these passages, to which others could be added, speak[s] clearly of natural right. This precise expression is extremely rare in Plato. *The* classic passage occurs in the *Republic*, 501, and which is in the sixth book, and I will

[xii] The transcript has a fairly lengthy blank space here.

again ask our reader, Mr. Butterworth, to read this short passage to us. I remember distinctly that it is in this translation. 501d. Yes, it is here the passage of how the best city is to be erected, established. Begin here: it's not very long, the end of the page: "He will take the society."

Reader: "He will take society and human character as his canvas, and begin by scraping it clean. That is no easy matter; but, as you know, unlike other reformers, he will not consent to take in hand either an individual or a state or to draft laws, until he is given a clean surface to work on or has cleansed it himself."

LS: In other words, it will be a beginning, an absolutely new beginning. In our language, a revolution from the ground up. Yes?

Reader: And the interlocutor says, "Quite rightly." "Next, he will sketch in the outline of the constitution. Then, as the work goes on, he will frequently refer to his model, the ideas of justice, goodness, temperance, and the rest, and compare with them the copy of those qualities which he is trying to create in human society."[xiii]

LS: Well, let us leave it at that. In others words, he will look in two directions. He will look first at this and then at that, and by a proper mixture of the two bring about the right order. Now what are these two things? And here you see what the translators do. He will look at what is by nature right and noble and so on and so on, and then also toward that which is among human beings. So you wouldn't find the word natural right in the translation, what is by nature right—the idea of right, I think he says. This is in a way a correct translation, I mean, but it is also in a way very wrong. So this: what is by nature right; that is one of the few, in a way the only passage in Plato and we have to discuss that. Cornford, this translator, is in a way correct because for Plato what is by nature right is indeed the idea of justice. So whenever Plato speaks of the idea of justice he means what is by nature right, and from this point of view the idea—natural right occurs in Plato very often, but this term is so extremely rare. And there is evidence, enough evidence to show that the ideas in contradistinction to everything else are in nature. For example, I refer to you *Republic* 597b to 598a; that's in the tenth book. But what is an idea? Natural right, the idea of justice, is an idea.

What, then, is an idea?[xiv] —but hard to understand, an idea is a self-subsisting being which is unchangeable in ever respect and hence which is always or eternal. That is the least one has to say. An idea is not a concept. It became a concept in post-Platonic thought. In Platonic thought an idea is a self-subsisting being. Let me try to explain it somewhat. You must have heard, if only by reading the daily papers, about missiles, of something called Nike,[xv] or as I was brought up to pronounce it, Nike.[xvi] I will write it here. [LS writes on the blackboard] That is the Greek word for victory. Now what [is] victory? There are many victories, you know, in many wars and so on, but victory was also understood by most Greeks to be a goddess, and therefore there were also sculptures of her, well-known sculptures. And so Nike could of course then also mean the statue of Nike. Now there were many many battles and many many statues, and yet there is

[xiii] *The Republic of Plato*, trans. F. M. Cornford (New York: Oxford University Press, 1945).
[xiv] The tape was changed at this point.
[xv] The United States' first anti-aircraft missile system, put into place in 1953, was called Nike Ajax.
[xvi] The transcriber notes: "Long 'i' used in first pronunciation, short 'i' in second."

ultimately only one single Nike. Whenever a battle is won, whenever victory is worshiped because of the victory, men mean always the same being, Nike. She came down at this particular place among this army and gave them victory. So this notion of gods, of a certain kind of gods like Nike, was for the Greeks a help in understanding what Plato meant by ideas. There was another goddess called Dike, translated "right": a self-subsisting being which is always. But of course the Platonic ideas are not goddesses or gods. Now what then—is the Platonic meaning facilitated as it were because of the Greek understanding of gods but eventually not dependent on it?

Now it seems that there were two kinds of things which induced Socrates and Plato to speak of that. The first things are mathematical things. When you take a circle, for example, or a triangle, which I draw here, it is of course not a circle. It is only an approximation to a circle. And even if I would use a marvelous machine, it still would not be a simple circle because there would not be—never be a clear curve. It would be much too big for a curve. So the circle which we mean when we speak of the circle strictly mathematically is not visible to the senses. The sensual presentations are only of assistance. They point to it. They are imitations of the true circle. So there are then things which are not sensible and which are one, in contradistinction to the many limitations by many people on many occasions, and which are in this sense perfect and unchangeable. And then there is something else where we can all still see that there is such a thing and these are what we still call the virtues. When Plato or a Platonic character praises Socrates after his death—at the end of the dialogue called *Phaedo* he says Socrates was the justest, wisest and so on, of all men of his generation; he does not say Socrates was simply unqualifiedly just and wise. What does he mean by that? That no man is fully just, and so on. All virtue which human beings possess is more or less defective. Virtue itself transcends every embodiment. No society is fully just, no law is fully just, and so on. Just as the true circle is never embodied in any sensibly perceivable thing, as little is virtue ever completely present. It transcends that too.

These seem to be the starting points of the Socratic–Platonic thought, and this is now enlarged, universalized in a way which is then really paradoxical, for what is true of the circle and of justice is according to Plato true also of such things like a dog. Many dogs, many breeds, two sexes, and so on and so on, and old and young ones: none is according to Plato a dog pure and simple, because this is, let us say, a beagle, a male beagle, and this is a female Irish setter or whatever it may be. It's not a dog pure and simple. Dog pure and simple transcends all dogs, just as the circle as meant by the mathematicians and justice as meant by all of us transcends any embodiment. And here a certain great paradoxy arises which does not arise in the case of mathematical things and in the case of the virtues, because the true dog proves to be a thing which doesn't bark, because barking is obviously some change, nor does it wag its tail nor does it run around. And this is very strange, and the most simple reason why Aristotle opposed Plato was exactly that. Aristotle said *that* is a true dog who wags his tail and not the one who cannot wag his tail. And this will be always the great recommendation of Aristotle, that he said that. Or another example: the true bed is a bed on which no man can ever rest. That's also highly paradoxical. So I cannot possibly go into the question what Plato meant by that. I state it only as a thing which we must not forget. The idea is primarily in all these cases the what of a thing: dogness, the dogness of a dog.

This distinction between the true dog and the dog is akin to a traditional distinction between essence and existence. The essence of the dog is one thing, the essence, dogness; the existence, that he is. This is not what Plato means. The distinction between essence and existence is a very late distinction, surely long after Plato and Aristotle, whenever it might have arisen, because if we use the terminology of essence and existence we would have to state the Platonic view as follows: The truly existing is the essence. But this I only say in order to avoid certain misunderstandings.

The what of justice, to come now back to our immediate problem, is justice itself without any admixture: justice pure and simple, to use this wonderful phrase. Pure and simple, that is what Plato means. Pure and simple, not justice qualified in this way, say, Greek justice or something that would [qualify it], but justice itself, pure and simple. This is the idea of justice. Now what then does Plato teach about that? He devoted to this question a whole dialogue and I suppose the most famous dialogue, the *Republic*. What then is the idea of justice according to the *Republic*? Now after this somewhat solemn introduction, everyone must be surprised and think the mountains bring something—are lying in—I do not know how to translate [. . .] and a ridiculous little mouse is being born.[xvii] Now what is justice according to the *Republic*? Answer: minding one's own business. It's really an anti-climax, isn't it? But Socrates however makes the following point. He says minding one's own business or something of this kind, minding one's business or a certain manner of minding one's business. Now what does he mean by that? I suspect that he means doing one's business well. [7]But still that is very general. What he implies is this: only a being consisting of parts can be just, properly speaking. The parts must do their work well and the parts must be heterogeneous. A being consisting of heterogeneous parts, each of which does its work well, that is a just being. So justice, we can also say, is the activity flowing from the good condition or state of something consisting of heterogeneous parts. This would surely lead to the consequence that health would be justice. That is not unacceptable to Plato. Indeed, justice is a certain kind of health, namely, health of the soul. What we call health in the body is, in the case of the soul, justice. That is what Plato means by it. There is also a health of the city. The just soul is the healthy soul and the just city is the healthy city. That is indeed the explicit doctrine of the *Republic*.

Now of course we speak of [the] justice not only of human beings and cities, but also of just laws, for example, and that is however—there would be no difficulty, because a just law can be understood only relative to the just city and the just soul. This would not create any difficulty. Now let us first consider the health of the soul. To repeat, the health of the soul is not justice itself. That's the idea. It is only one form of embodiment of it, but the most important one. The soul according to Plato in the *Republic* has three parts, which he calls reason, spiritedness, and desire. Spiritedness, you can say, corresponds also to such things like anger. In other words, one way of explaining the difference [is this]. Desire—say, you desire an apple and then there is an obstacle to your getting that, and then you get angry whenever you are confronted with an obstacle. And for some reason Plato asserts that this part by which we are angry is higher in rank than that by which we desire. I cannot explain that now, I just state it. At any rate, these three parts have each its way of working well. In other words, there is a virtue belonging [to each] of these three parts. The virtue of reason we call wisdom; the virtue belonging to spiritedness we

[xvii] Possibly a reference to William Yeat's poem, "The Second Coming" (1919).

call courage or manliness; and the virtue belonging to desire we call temperance or moderation. This then is the structure of the healthy soul, which possesses wisdom, courage, temperance.

There remains one large province of human doings and sufferings, and these are the relations to other human beings. In other words, the soul may be well constituted in itself, and perhaps he does not have the proper relation to others, and therefore there is place for a fourth virtue, which we call justice in the narrower sense: relations to other men or to the city. So we can then say according to Plato the natural right is a good order of the soul: first, as regards its parts, and second, as regards to other human beings or the political community. And this, the notion that the virtue of each part is the perfection of that part, the perfect working of that part, is at least indicated in a passage of Plato's *Laws*, 765e to 766a. Now I think I can read another passage in the *Laws* which is also an illustration of part of what I said, and that is in the first book, 631b to d. Unfortunately, I do not have more than one copy and I just—I'll read it to you and try to correct it a bit.[xviii]

"[G]oods are of two kinds, human and divine; and the human goods are dependent on the divine, and he who receives the greater acquires also the less, or else he is bereft of both. The lesser goods are those of which health ranks first, beauty second; the third is strength, in running and all other bodily exercises; and the fourth is wealth—no blind wealth,[xix] but keen of sight, provided that it has wisdom for a companion. [In other words, wealth as wealth is a very dubious good and becomes a good only if the owner is sensible—LS] And wisdom, in turn, has first place among the goods that are divine, and rational temperance of the soul comes second; from these two, when united with courage, there issues justice, as a third; and the fourth is courage. Now all these are by nature ranked before the human goods, and verily the lawgiver also must so rank them."

In other words, there is a natural order of all goods, and in particular of the higher goods, the virtues; and the human legislator is good or bad to the degree to which he follows this natural order of the virtues in his legislation. And in the first book of the *Laws*, where this passage occurs, an example is given of a bad legislation, of the Spartan legislation which put courage, manliness, the virtue of war at the top and made all other virtues subservient to the virtue of war. That was against the natural order. The true order would be where the virtues of war are subordinate to the virtues of peace.

So let us summarize, then. The doctrine of natural right in the Platonic sense is a doctrine of the natural order of the virtues as the natural perfections of the human soul; and therefore, while the term natural right occurs very rarely in Plato, the thought is omnipresent in his teaching. Now there is also a narrower sense of the term right: that which refers particularly to other men or to the city. That is the same consideration. What does it mean to be just in the common sense of the term? In the emphatic sense of the term, to be just means to be a good man in every respect: wise, courageous and so on. But what [about] in the common sense, where we think of virtue as a social virtue? Now in the first place, that is developed in the first book of Plato's *Republic*: not to harm anybody. Well, for example, what do we call a just man? Someone who doesn't steal and murder and so on and so on. But here difficulties arise. Can one avoid harming others? Let

[xviii] Strauss reads from the Loeb edition, translated by R. G. Bury.
[xix] In original: "no blind god Plutus"

us take an everyday example. There are so and so many fellowships. If you get it, you prevent someone else from getting it. You surely harm him in a sense, but what does it mean? You harm, to use a present-day slightly obscene expression, you hurt his "ego."[xx] That is of course not genuine harm. That is a fantastic account. When we speak of not harming anybody, we mean not to inflict serious harm on him, and [we do not mean] not hurting his vanity. For example, take away a man's life, his health, his property, his wife, his honor. These elementary rules. Justice means to give or to leave everyone what belongs to him. Justice thus understood is meant to be good, and this creates a difficulty. And there is even a difficulty which is even a contradiction, and this contradiction gives rise to an ascent from the primary opinion to, ultimately[8], the idea of justice, to justice pure and simple. Take the example used by Socrates himself: that what belongs to a man, let it be a knife or a gun, and let the owner be a lunatic. Is it just to return that knife or gun to that lunatic? If that were right, justice would be bad because this fellow would harm himself and he would harm other men. So we have at least to say to give or leave everyone what belongs to him unless he is mad—an important qualification—unless he is likely to misuse his property grossly. Then one could say: Why only grossly? Is this not an arbitrary limitation? And that leads very far.

Let me state the difficulty somewhat differently. When we say "to give or leave everyone what belongs to him," what do we mean by "belongs to him"? What belongs to him by law. But the laws may be bad or foolish, and so what belongs to him doesn't do any good to him or others. So we would then have to say to give or leave to everyone what is good for him by nature and as long as it is good for him by nature. This is a very brief sketch of the argument of Plato's *Republic*, which leads to the conclusion that there must be absolute communism and absolute rule of the wise, and that is an absolutely stringent argument if you consider only these facts which I just mentioned. Justice is good if everyone is assigned what is good for him and for as long as it is good for him. It is not good to leave his property to an irresponsible millionaire playboy who will ruin so and so many other people by his irresponsible actions. But who can say what is good for a man? Who can say what is good for the body? Answer: the physician. Who can say what is good for the soul? Answer: the physician of the soul, i.e., the philosopher. And he of course must follow strictly what his art, medicine of the soul, tells him and not merely popular opinions or traditional opinions. He must have absolute power. That's what the *Republic* teaches.

I restate this only in the barest form, but you see Socrates or Plato in presenting this argument abstracts from quite a few very important points, surely. But within this abstraction the argument is very clear, and this leads then to the classic famous teaching of the *Republic*; in other words, true justice, more generally stated, is possible only in a just city. Now this, I think, is more easily intelligible. A just man is a man who, among other things, obeys the laws, and that's the first thing. I mean, the unjust man is the man who is lawless or disregards the laws secretly or even openly. A just man is a lawabiding man. But if the laws are unjust in the first place or very imperfectly just, then all his desire and resolve to be just remains in a way empty. The justice is, so to say, in his heart, but it cannot become actual in his actions because the actions are guided by a possibly unjust law. Justice in the full sense, in intention as well as in action, is possible only if the laws are just. But the laws will not be just, except accidentally, unless the legislators

[xx] Quotation marks appear in the transcript. Strauss might have said "quote ego unquote."

are just, the lawgivers; and hence only in a society where the lawgiver, the sovereign, is just can the requirement of justice be fulfilled.

The *Republic* has *prima facie* the task to show this: How does a just city look like, a just city being a city where one can practice justice in the full sense, and not a more or less imperfect justice as one can practice of course in any society? Yet, as Socrates indicates in 427d, even the just city described in the *Republic* contains injustice. It deviates from natural right. Why is this the case? In the first place, the perfect city as [. . .] in the *Republic* is based on what one may call, and what is as a matter of fact called there, the noble lie. Now what does this mean? The key point as far as it is relevant for us here now is this: the noble lie consists in the fact that we regard only our fellow citizens as brothers. The secret of the noble lie, so to speak, as presented in the *Republic* 414 is this: that first all men are presented as brothers, children of the same mother earth, and where the term earth is replaced two lines later by the term [. . .][xxi], territory—the territory of this or that city—and parallel to it the human race is replaced by a segment of the human race, this particular society which forms a political society. Fraternity is limited only to fellow citizens, and this is a deviation from nature and therefore this is an element of fundamental untruth, without which, however, according to Socrates human life is impossible because human life requires political societies, it requires cities.

Another point which is also not altogether irrelevant: according to the teaching of the *Republic* it is necessary that everyone be assigned a job best for him, i.e., for which he is best fitted by nature, and therefore also best for society. That would be a just society, in other words, [one] in which no one who is not a musician is allowed to ruin and annoy other people's ears by the savage things he does, and the same applies also to tailors, bricklayers or whatever it may be. Good. Now this assignment of the individuals to the various jobs cannot possibly be exact, because it is meant to be made, as it were, in the cradle, or at least at a very early age where it is impossible to say with any definiteness where he belongs. For example, the highest craft is of course [the] philosopher's, and how can you possibly say with certainty of a five-year-old child that he is fit to be a philosopher and not, let me say, a clerk in a company's office? So the city necessarily suffers from injustices, but even this not-altogether just city, although it is the justest city imaginable, is not possible, as becomes gradually clear as the argument of the *Republic* proceeds.

Therefore, what is the conclusion? The conclusion is that we have to redefine the justice or the right possible as a right which necessarily deviates from what is intrinsically right. I will this develop more fully next time. I will only state this point. It is impossible for men to live together without, as we say, without some freedom, i.e., without every man in one way or the other having a say regarding the laws of his society. Regardless of whether this individual is intelligent or unintelligent, public spirited or a very narrow egoist, that's necessary. This means however that wisdom, pure wisdom, cannot rule, because pure wisdom would in effect mean rule of tyrants pretending to be wise. We would never get the true rule of wise men, and I think the experience in our century written large on every page of the newspapers amply confirms it. So the maximum we can have is a mixture of wisdom, because we must hope that at some place in this great legislative machinery wisdom will be heard at one point or the other. So wisdom is indispensable, but there must also be consent. Consent however means in this connection consent

[xxi] The transcript has a blank space here.

by unwise people. Now if we state it now in these terms, that wisdom as wisdom is directed toward what is by nature right, the unwise as unwise will not understand what is by nature right. That is surely the Platonic way of looking at it, and therefore the only right which we can have is a natural right in many ways diluted by principles of unwisdom, and that is the reason why Plato speaks so rarely of natural right although he has clearly delineated a doctrine of natural right proper.

To summarize this point, the Platonic doctrine of natural right is identical in the first place with his doctrine of the best *polis*, the best regime, as the absolute rule of wise over unwise people, as this which would be intrinsically the justest thing although not obtainable in practice. But above all, the Platonic doctrine of natural right is his doctrine of the virtues and the natural order of the virtues. I will leave it at that, and let us have a brief discussion to clarify some points. I mean, what I do not even dream of doing is to give here an interpretation of the *Republic*; that goes without saying. I limit myself to that small segment which is indispensable when one speaks of natural right. Yes?

Student: Can it be said for Plato that there are several cities which are good, but at the same time there are such radical differences in the cities?

LS: In secondary matters, yes. Not in essential matters, no. In other words, there could be differences regarding—one could be in Greece, another could be in a barbaric country, and this kind of thing. It could be. But not in essential matters, no. Well, in a loose sense of the word good[9] but not in a strict sense. Yes. The good is one and evil is infinitely many. That is the Platonic thought. Yes?

Student: Before, you said that Plato believed that no man could really embody perfect justice; and if this is so, how is this state to go on with these perfectly wise men ruling, these philosopher kings, if there is a possibility because of their very nature that they will be unjust?

LS: Yes, that is a very good point, and as a matter of fact it is made in the *Republic* itself. Let me try to state it as simply as possible. When this key proposition of the *Republic* is made, roughly in the very center of the book, evil will not cease from the cities nor from the human race if the philosophers are not kings or the kings are not philosophers—that's the key passage. This is however repeated at the end of the ninth book in the following manner—or is it the end of the seventh book?—well, it doesn't make any difference because both passages are very relevant to this question. I think it's the end of the seventh book. And then he says evils will not cease from the city if, when the philosophers have become kings, they will not expel everyone older than ten from the city, and then they will bring up the new generation completely from scratch.[xxii] So this is of course—if you think that through, you see immediately that this is not possible, [not] a possible thing. No people will accept salvation at that price. They might be willing to accept salvation from the hand of philosophers, but not at the price of their being driven into the fields and be[ing] separated from the children.

Now, but the main point is this: The implication of this passage, evils will not cease—and the whole passage which I cannot now quote from memory—is [that] it is possible to abolish evil on

[xxii] *Republic* 540e-541a.

earth, and this is clearly denied in the Platonic dialogues, especially in the *Theaetetus* and also in the *Laws*. Every earthly being, and therefore in particular man, is necessarily exposed to evil, and this in one way or the other is bound to affect also his virtue. So in other words, your question is perfectly legitimate. What is the conclusion? The conclusion is only this: Taken by itself, it would only reinforce Plato's doctrine of ideas, that justice pure and simple will never be found in any city, in any human being, in any law. It will always be an imperfect justice. But it makes all the difference in the world how imperfect; and there is perhaps a kind of a minimum imperfection, and that is what we call a perfectly just man. Yes?

Student: Mr. Strauss, on this idea that true justice is possible only in a just city, and the just men—they obey the laws and if the laws aren't just it would be impossible to be a just man—

LS: Fully just. I mean, for all practical purposes we would say a lawabiding man is just, but then there come the interesting cases. For example, the case of, say, the famous case of people subject to tyrannical government. How lawabiding can they be without ceasing to be just? You know that? And we don't even have to go to Nazi Germany and Soviet Russia; it suffices to remain within the pages of Plato, where we have the case of Socrates. Socrates was lawabiding. It's emphasized time and again. But yet, would he have been willing to be lawabiding under all circumstances? Answer: No, because when he discusses this question in the *Apology* and he says, "If you Athenians would now make a law forbidding me to philosophize and say we [will] let you out now and don't inflict any punishment on you provided you promise to abide by that law, would you do it?" "No." He would transgress the law forbidding philosophizing. So there are limits to lawabidingness for every human being. They may lie in different places. And therefore justice cannot be identified simply with lawabidingness.

Same Student: Yes, well, I was thinking of the interpretation given in "Judgment at Nuremberg"[xxiii] that a judge is the guardian of laws and therefore one who would allow laws to become corrupt must be held responsible. My question is: Is this something—it was obviously positive law in the Nuremberg trial, but on this point with the judge, can we say that a higher law than a positive law, in a natural law court,[xxiv] this is a correct statement and therefore the judge may be held responsible? For if not, it seems to me that justice must conclude with some sort of deals. If the judges of such a society are not responsible, who is? And if no one's responsible—

LS: Yes, that is a very great question, but it is of course—I mean, it is a very great question but it is not the primary question. The primary question: Is there a natural right? Because if there is no natural right, how can we appeal to it? I mean, you cannot appeal to a mere ideal and say, "That is my value." I mean, every judge who would do that is a criminal man, of course. He is not put there to enforce his values. So if it is not something, as they say, objective then he has no right to appeal to it. And that is the first question: Is there a natural right? And then he can appeal to it. And that is always a difficult question, but you know—I don't know whether you know the case of my friend and a friend of some others, Anastaplo,[xxv] you know. [10]He defended this position

[xxiii] Probably a reference to the Academy Award-winning film, *Judgment at Nuremberg* (1947), directed by Stanley Kramer.
[xxiv] In the transcript: "court (?)"
[xxv] George Anastaplo (1925-2014) defended "his First Amendment rights before the McCarthy-era Illinois Bar and eventually the U.S. Supreme Court . . . Anastaplo was denied admission to the Illinois Bar in

[11]which implies a right of resistance to government, a principle of right to revolution; and this was not recognized by most legal authorities in this country [12]in spite of the Declaration of Independence. This however requires a long argument, because what people tried to do in modern times was to establish a legal order which would make it superfluous ever to appeal to a higher law. If the legal order is fundamentally decent—if this is sure, if you can make certain of that—then one can rightly say you have no right to appeal to a higher law. More technically precise: If natural right is the constitutive principle of the whole political order, then you cannot appeal from the political order and its organs, including judges, to the natural right. That was surely the intention of men like Locke and Rousseau. Whether this is feasible is also a long question. I have to speak of that later, but this doesn't come up in this stage of the argument. Yes?

Student: Does Plato state that consent is necessary? Is this a practical thing, or is it stated in some other way?

LS: Yes, it's a practical thing. But you see, when we speak about right we always speak about a practical thing. Do you see? When we speak of right we mean something which men are supposed to do, and that's practical. I will take this up next time, and perhaps you can read in the meantime for yourself two passages in the *Laws* which I have to mention next time: 690 a to c, and 757a to 758a. These are two key passages, and I will discuss them. In other words, I will explain later what is the rationale for the qualification of wisdom by consent. Consent always means for Plato, regardless of whether he uses the term or not, consent by the unwise. If you do not take this into consideration you do not see the problem. You see, consent of the wise: that is wisdom.

Also when we speak of freedom so loosely as we do it most of the time, we do not consider what this means: a freedom for people who are not very virtuous. Shall I give you an example? I mean, these things are all in our tradition in the great books, but they are not ordinarily read. I believe they are not even ordinarily read in all law schools and all political science courses. One of the most famous modern philosophers was, as you surely have heard, Immanuel Kant. Kant taught that lying is sinful, morally bad under all conditions, and he took this—he stated this more emphatically than any philosopher as philosopher as distinguished from theologians did, so much so that you are not even entitled to lie to a potential murderer about the whereabouts of his victim. He wants to kill X and he asks you, "Where is X?" And, I mean, ordinary simple people would say: Well, of course I won't tell him the truth because if he sees him he will surely shoot him down. You may not do that. It's a lie. You may of course say, "I refuse to answer." Strictly speaking, you cannot say, "I don't know," because if you know—yes? Good. So Kant was extremely strict, but when he speaks of the natural freedom of man, he says there is only one natural right, the right to freedom. And this right to freedom includes the freedom to speak, and

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1950 after refusing on principle to answer whether he was a member of the Communist Party—calling questions about political affiliation and religion irrelevant. The Committee on Character and Fitness, which routinely interviewed Bar applicants, also asked if Communist Party members should be allowed to practice law in Illinois. 'I should think so,' replied Anastaplo, who then went on . . . to defend the right of revolution, if justified, as established in the Declaration of Independence. Anastaplo argued his own case before the Illinois and U.S. Supreme Court. He lost the federal case in 1961 by a 5-4 decision." http:news/uchicago/edu/article/2014/03/07

the freedom to speak includes the right to lie. And Kant doesn't elaborate that, but the reasoning is very clear, because if the freedom of speech does not include the right to lie then you admit the legal necessity of censorship in every respect. I mean, Kant doesn't exclude the limited cases, [such as] that you may not be able to lie: you rather have no right to lie when you are under oath, and this kind of thing. That is a special case. But the freedom of speech as is taken for granted in modern liberal society includes as a matter of course—that is not even stated—the freedom to lie. How could there be electoral campaigns, may I ask, without this freedom to lie? Because if we are a bit serious we know that if you do not technically lie there are all kinds of [ways of] doing it by circuitous manners which morally are the same as lying. So the freedom—all these freedoms as they came to be recognized in modern society are very wide freedoms which give rights also to immoral practices. That is from the very beginning, and that has nothing to do with [the] particular looseness of some individuals. I mean, this is an entirely other matter. But I will speak of that later, of the great change which natural right underwent in modern times which permitted this redefinition. Now did I answer by this long remark the question which was addressed to me? Who was it? Mr. Boyan—what was your question?

Mr. Boyan: Did Plato's statement that consent is necessary . . . practical. The implication of my question was, is this a good thing in any sense?

LS: Plato would say an absolutely necessary thing. A necessary thing is not necessarily a good thing, but an indispensable thing. You cannot have a society except under wholly, practically impossible circumstances, in which wise men [are] like fathers of the people, who are in the same relation to the ruled as fathers would be—wise fathers—to little children. I mean, some people believed that kings can be such fathers of the country, but this is not very convincing.[13] There may have been good kings and surely were, but they were not necessarily. That was the long argument, for example, of Locke against Filmer, you know, that a king is not the father. Simply, these are not his children which he generated. This bond which unites children to their father and vice versa cannot possibly exist between the king even if he is[14] Augustus the Strong of Saxony[xxvi] who had, I believe, a thousand illegitimate children. But this only confirms that you have that. Good. Yes? So then we will meet next Monday.[15]

[1] Deleted "us"
[2] Deleted "then."
[3] Deleted "see"
[4] Deleted "man only"
[5] Deleted "So what—now."
[6] Deleted "and therefore also the term"
[7] Deleted "now."
[8] Deleted "to."
[9] Deleted "yes that is of course."
[10] Deleted "and."
[11] Deleted "and."
[12] Deleted "although."
[13] Deleted "I mean."
[14] Deleted "an August—what was his name—."
[15] Deleted "and will, yes."

[xxvi] Frederick Augustus (1670-1733), Saxon elector and Polish king.

Session 7: October 29, 1962

Leo Strauss: [In progress] —stated in a way in which I seem to have stated it on page 11, following of *Natural Right and History*. This refers to my remark, "Philosophizing means . . . to ascend from public dogma to essentially private knowledge."[i] But the conclusion, I believe, does not follow. Is not all knowledge essentially private? Although it may become public,[1] it is not essentially public, whereas public dogma, what holds a society as a society together, is necessarily public. Furthermore, the same critic says natural law must be within the definitely possible grasp of all human beings. Yes, but that is surely not the Platonic understanding. It is possible that my concept of natural right is that of a Platonic idea. Well, let us disregard my concept, but the Platonic concept of natural right is surely that of a Platonic idea. Now according to Plato all ideas are in a way effective in every human being. As is put in the myth of the *Phaedrus*: Every human soul has seen the ideas prior to being born within a body. That's a mythical expression, but the nonmythical meaning is [that] to be a human being means to have an understanding, and to have an understanding means to have some grasp of the ideas. But that doesn't mean, of course, that all men have a sufficient grasp. In other words, practically speaking there is no human being who does not have some notion of right, and this notion of right is a part of the full notion of right; but many people have no more than a very fragmentary notion and whether they are able to ascend from the very fragmentary notion to the full notion is a long question, a question which is by Plato surely denied.

This remark,[ii] furthermore: "If you are trying to combine Plato's concept of philosophy with Aristotle's concept of right the two will not mesh. Plato and Aristotle locate nature or essence in very different ways." Yes, I'm aware of that and I will take up this question in the more specific form: What is Plato's doctrine of natural right? What is Aristotle's doctrine of natural right? And I propose that we postpone discussions until I have made this point clear.

Now there is a further question, also regarding the Platonic doctrine. "Justice in its ideal form is a compound of the proper balance between wisdom, courage and temperance as these fundamental virtues apply to the social aspect of man's life." Yes, well the idea of justice as Plato understands it, if we take this quite literally, is not identical with the just soul. If I state it quite dogmatically and without even an attempt to understand it, but merely textbook, so to speak, the idea of justice transcends every being participating in the idea and therefore also in particular the human soul. Schematically, if the idea of justice is somewhere here the just soul is here and the just city is here. These partake or participate in the ideas. They are not themselves the ideas. And therefore it is, of course—the difficulty is then to say what precisely is the idea of justice in contradistinction to the just soul, the just city; and I gave an answer to that, a tentative answer. Justice itself according to Plato is something like the right order of a whole consisting of heterogeneous parts, and this of course would even then apply to the body, it would seem, so that the health of the body would be the participating of the body in justice, and therefore justice could also be called the health of the soul.

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[i] *Natural Right and History*, 12.

[ii] Strauss responds to a paper or questions submitted by a student.

Now then two specific questions. “To what extent are the social sciences for Plato autonomous, and to what extent do they revert to more basic sciences?” Yes, that is hard to answer. Social sciences as we know them today do not exist for Plato and would not in Plato’s point of view be genuine sciences if he knew of them. There is fundamentally only one science for Plato apart from mathematics and the practical arts, and that is what he calls dialectics or philosophy. And such questions like justice, rule, government, and so would of course be as much part—subject of dialectics as other things. You know? There is no such distinction possible, except in a provisional manner.

Second question: “Can one talk about natural justice if justice is a compound?” Yes, this next word I cannot read—does this say; oh, no: “What does this say about natural right as it applies to the social sphere?” Now the fact that natural justice is a compound is by no means an objection, because for Plato most ideas are compounds. Yes? The idea of the soul you can also say is a compound. I think, again, [2]let me finish my account of Plato and then we will take up the questions regarding Plato, and when I’m through with my account of Aristotle we will take up the question as a whole.

Now let me remind you of the context. Natural law or natural right presupposed the notion of nature. Nature is discovered in contradistinction to art, and above all to *nomos* or law. Hence natural law, natural *nomos*, *nomos* as *physis*, is to begin with a contradiction in terms, the combination of two things which cannot be combined. The question is, rather, natural right, what is by nature just. Is all right conventional, or is there some right which is natural? Both answers were given prior to Socrates; but of the thinkers prior to Socrates, the so-called pre-Socratics, we know only through fragments and through reports. We never get a developed doctrine in their own terms. The clearest and most comprehensive report is that which you find in Plato’s *Laws*, book 10, on page 889. The reports which you have, for example, in Callicles in the *Gorgias*—Callicles’s doctrine, of which I will speak later, is naturally not a genuine doctrine of a thinker, because Callicles is a very ambitious young Athenian who as it were distorts the doctrine to suit his purposes. Similar considerations also apply to the account given by Glaucon in the second book of the *Republic*. But in book 10 of the *Laws*, the speaker, the Athenian Stranger, speaks of the doctrine of philosophers and here you have—there is no report of this kind available in Aristotle. This is the best we have. Now from this report it appears that prior to Socrates or Plato the conventionalist view prevailed, i.e., the view that all right is conventional. And according to Plato’s diagnosis conventionalism prevailed, because the prevalent view was that the first things, the most emphatically natural things, are bodies and not soul. The simplest and most convenient example would be the doctrine of atomism. I mention that because this has been effective even in modern times. I mean, if the roots of all being are atoms and the void, then of course everything is fundamentally bodily. There is nothing—soul is something derivative. According to the old atomistic doctrine, by the way, there are soul atoms. That is to say, certain particular atoms are the soul. Soul is body.

Now what does Plato mean by that? I think one can state it as follows. By right we understand somehow a common good, but the body is by nature private and only the body is by nature private. Now what does this mean? The body as body and what belongs to the body and what is bound up with the body cannot be shared. You can sympathize with someone who has a

toothache, but you cannot share in his toothache. The body as body is private. That is, by the way, the key thesis of the *Republic* in particular, because the communism suggested there is based on the premise that the only thing which cannot be collectivized or communized is the body. Everything else is communized. The body being essentially private, the recognition of body as the only thing natural leads of course to a strictly egoistic doctrine of good and bad. Genuine community is possible only in pure thought. For example, we can share feelings, as we know, but still we can never be certain that we share them identically. [3]To take the simplest case, if you study together a demonstration in Euclid, you share that understanding, if you understand it, if both parts understand it, absolutely. This is in no way affected by the fact that one, two, five, a thousand, a million individuals understand it. This is the background of the Platonic view and hence, to repeat, there is an essential connection between corporealism, not to use the word materialism, and the denial of natural right in Plato's view. Things are in fact a bit more complicated, because the first philosophers who developed a natural law teaching proper, the Stoics, were corporealists. But this I say only to give you a caution. I'll take this up later.

So prior to Socrates it seems that conventionalism prevailed. Socrates is a key figure in the history of natural right, and this is connected with his notion of nature. Nature is above all not [that] out of which a thing comes in being, [4]or through which—for example, atoms, elements, or whatever it may be—but the what, the characters of things or kinds of things. These "whats" are not reducible to the out of which or the through which. You cannot explain a thing, anything, without knowing first what the thing is. This, I think, is obvious from every point of view. How can you explain, say, the Renaissance in terms of Marxism, or of psychoanalysis, or any other doctrine if you do not know first what the Renaissance is? Because if you do not grasp what it is properly, you do not explain the thing to be explained, but a figment of your imagination. So as far as knowledge is concerned, every explanation must be preceded by knowledge of the what. But this is of course not the whole story. The crucial further point is that this "what" cannot be identical with the totality of the conditions, the so-called material or efficient causes of the thing. If you have assembled all material or efficient causes of a thing, you do not yet have the thing. As it would be put today, when all the conditions are together, something new emerges, something which is not contained as such in the material or efficient causes. Simple example: H_2O. If you have H_2 and if you have O they are the conditions. You bring them together, efficient cause; then something emerges which is called water, whereas neither H nor O nor the fellow who brings them together is watery. And the same applies, of course, especially to man. Man cannot be reduced to his subhuman conditions. If man is understood in terms of the subhuman, there can of course be no natural right. There is no right and wrong among atoms or lice or apes and so on. But if man is essentially different from the non-human there is at least the possibility of natural right. This one can say is the crucial implication of the Socratic teaching.

But Socrates did not write, and everything we know of Socrates is based on reports or presentations: reports of Aristotle, in the first place, and the presentations by Xenophon and Plato. So we have to turn to Plato above all, for the reason given last time. Plato does not speak of natural law. He speaks of natural right. I refer you to the key passage in the *Republic*, 501b, from which it appears, if it is read with some intelligence, [that] natural right in the Platonic sense is identical with the idea of right or the idea of justice, and Plato's doctrine regarding the idea of right is conveyed above all through the *Republic*. What is by nature right is concretely visible in the case of the soul, in the soul which is just—the health of the soul, i.e., the perfection

of each part of the soul in accordance with the proper order of these parts. So in other words, the just man is the perfectly virtuous man. To that extent, the doctrine of natural right is identical with the doctrine of the virtuous and their natural order.

But this does not exhaust the issue because there is also the [matter of] relations among men, justice in the narrower sense. Plato tries to solve this difficulty by asserting a parallelism between the soul and the city. The good city has the same structure as the soul. Well, just as you have a rational element in the soul you have one in the city: the wise government. You have a spirited element in the soul; corresponding to it in the city, the good army defending the city. And then you have an element of desire, of satisfaction of the primary needs, and this corresponds to what is now called the economic part of society and what Plato calls the moneymaking part, so that is not so remote from what we call economic anyway, the moneymaking part meaning those which take care that all needs of the city, the bodily needs of the individuals, are fulfilled.

But this parallelism between the soul and the city as stated in the *Republic* is defective, and the consequence of that is that no fully just city is possible, whereas it seems in the *Republic* that a fully just individual is possible. And the crucial question is, then, concerning natural right in Plato: Why is a fully just city not possible? This explains why the doctrine of natural right, why the *term* natural right, occurs so very rarely in Plato, so very rarely. Now why is that so? Now we have to take—we take a passage from Plato's *Laws*, which are in many ways more accessible to our understanding than the very difficult *Republic*. Now I just read it to you from the translation. The question arises, what and how many—that is in *Laws*, book 3, page 690:

Athenian Stranger:[iii] What and how many are the agreed claims regarding ruling and being ruled alike in cities and in households? Is not the right of father and mother one of them? And in general would not the claim of parents to rule over offspring be a claim universally correct?" *Clinias*: "Certainly." *Ath*: "Next to this the right of the noble to rule over the ignoble and then, following on these as a third claim, the right of the older to rule and of the younger to be ruled." *Clin*: "To be sure." *Ath*: "The fourth is that slaves ought to be ruled and masters should rule." *Clin*: "Of course." *Ath*: "And the fifth is, I believe, that the stronger should rule and the weaker be ruled." *Clin*: "A truly necessary, compulsory form of rule you have there mentioned [that's the interlocutor. The speaker goes on—LS]. *Ath*: "And the fifth, which is most prevalent among all kinds of living beings and according to nature, as the Theban Pindar once said [namely, the rule of the stronger—LS]. But the greatest, the most important, right is, it would seem, the sixth, which ordains that the men without understanding should be ruled and the wise man lead and rule. And this, my most wise Pindar, is a thing that I for one would hardly assert to be against nature, but rather according to nature, according to the nature of the law without force over willing subjects." *Clin*: "Most correctly." *Ath*: "Being god beloved and favored by chance I

[iii] The interlocutors in this passage are the Athenian Stranger and Clinias, referred to here as "Ath" and "Clin." Plato *Laws* 690a-c. Presumably Strauss's translation.

would regard as the seventh claim [. . .][iv] for casting of lots and declare that if he gained the lot he will most justly be the ruler but if he fails he shall take his place among the ruled."[v]

These are seven claims to rule, enumerated in an apparently disorderly manner, and one sometimes wonders why it is necessary to give so many individual cases which are not clear. But I think you can recognize that. If you look around you you will always find one of these titles to rule. Election of lot[5] of course must be enlarged a bit. Make it election; but then surely that is one type of rule recognized especially in the West, and there are other types. If you think, for example, of hereditary monarchies, this is the principle of the rule of men of noble families over those of less noble families and so on. So empirically the list is I think correct, is sufficient.

What we have for our purposes [. . .][vi] is the following thing. Of these titles, these seven titles, only two are explicitly treated as according to nature: the rule of the stronger, but above all the rule of the wise, of wisdom, intelligence, law, insofar as law has necessarily an ingredient of intelligence. These two natural titles are obviously not necessarily in harmony. That is a theme of the *Republic*, where the harmony is presented when the philosophers are kings. This means, in more specific terms, the wise men have an army loyal to them. That means to be kings, an army loyal to them; then in this case wisdom and force are united. So wisdom and force are two different things, fundamentally different things not essentially belonging together, and yet they must somehow come together if there is to be justice among men.

There is another passage of the *Laws* which also would be most important to study and that occurs in the sixth book[6], page 757a to 758a. That is too long now to read. I will state the substance as follows. What is by nature just is the absolute rule of wisdom by which the wise ruler assigns to each what is good for him and therewith good for the city. This implies a crucial assumption: that it is possible to reconcile these two requirements, namely, that each individual is given what is best for him, and that this is good for the city. The difficulty can be roughly illustrated as follows. According to the teaching of the *Republic*, where this thought is developed, everyone should get the job for which he is by nature best fitted. For example, the stronger fellows will become something like blacksmiths, and the weaker ones, say, tailors. This was not a profession in ancient times, but I make it easier by this comparison. They said shoemakers in that case. [7]But[8] perhaps there are too many strong fellows around, [more] than you need for blacksmiths or vice versa; then of course the good of the individual would have to be sacrificed to the common good. In other words, someone by nature a blacksmith might have to become a shoemaker, and this kind of thing.

This I do not want to go [into]; let us leave it at a simple formula which covers a big problem: that what is by nature good for each is also best for the city, the hypothesis on which the *Republic* is based. At any rate, the key point is absolute rule of the wise. But this is not feasible for the very simple reason: because of the strength of the many. The wise man may give the best

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[iv] The transcript has a blank space here. In the translation of this section in the Loeb edition, by R. G. Bury, reads: "Heaven's favour and good-luck mark the seventh form of rule, where we bring a man forward for a casting of lots, and declare that if he gains the lot he will most justly be ruler, but if he fails he shall take his place among the ruled."

[v] Presumably Strauss's translation.

[vi] The transcript has a blank space here.

guidance possible, the best direction possible, but this must be accepted and it is not necessarily accepted. Persuasion has a very limited power, and that against which persuasion runs up is the bodily brachial power of the many. This is Plato's understanding of the situation, as you see in this passage to which I referred. So the only possible right must be based on the principle: wisdom qualified by consent. Wisdom qualified by consent. One could say, but this is what Plato does not say, this is the natural right: that the order of civil society must be based on wisdom qualified by consent. But Plato does not say it because he is so aware of the fact that consent means the consent of the unwise, i.e., of the nonphilosophers. This is somehow an unnatural concession, yet a necessary concession, to which one could raise this objection (that is the point which this student raised in his written question when speaking of the opposition between Plato and Aristotle): Must a man be a philosopher in order to be wise, practically wise or prudent? And is practical wisdom not sufficient for the virtue of the citizen in the highest sense, for moral virtue? And here we touch on the root of the problem. For Plato there is no such thing as moral virtue. Plato knows only what he calls genuine virtue, and that is inseparable from philosophizing; or vulgar or popular virtue, which is not genuine virtue, which is a calculating virtue, meaning, for example, someone is temperate by mere[ly] figuring out that it is not a good policy to be intemperate. It is not based on a fundamental conversion of the whole man as the virtue of the philosopher is.

The very term virtue has been coined by Aristotle. This does not mean, of course, that people did not know—that no one who has[9] never studied Aristotle doesn't know of moral virtue. This beautiful expression, used I believe of Perry Mason,[vii] whom some of you will know: "Clean like a hound's tooth and sharp like a steel trap," is a simple rendering of the Aristotelian distinction between moral and intellectual virtues. So you see that is not something far fetched, and therefore I'm sure that[10] in a way men were always aware of the difference between intellectual virtues and moral virtues, but it is nevertheless of the utmost importance whether this awareness becomes fully explicit, as it becomes in Aristotle by the coinage of the two terms, or whether it does not have this full conceptual clarity. Restated in terms of this commonsense awareness of moral virtue, in the sense of "clean like a hound's tooth," one can say Plato questions the genuineness of this cleanliness if it does not go together with philosophizing. One can restate Plato's view as follows: moral virtue is a leaky vessel. And in this respect, of course, Plato agrees with the religious view. I come back to that later.

Let me make a provisional summary. Plato's doctrine of natural right consists of two parts: of the doctrine of the virtues and their natural order, and of the doctrine of the best regime as absolute rule of the wise over the unwise. Now I would like to add one point to avoid a misunderstanding. According to Plato's explicit doctrine the best regime is not always possible. Now when it is not possible, of course it cannot be just to establish it because the impossible can never be just. Therefore it becomes necessary to make a distinction which is not made in these terms by Plato or by Aristotle but which is meant by them and which has become necessary to make on the basis of the modern complications: the distinction between the best and the legitimate. The best is not always legitimate, and the legitimate is not necessarily best. In order to understand that, take such doctrines as, for example, that of Tom Paine and some later men, or earlier, connected with Tom Paine: democracy is the only legitimate regime. That is something entirely different

[vii] Perry Mason is a fictional detective and trial lawyer and the hero of at least eighty novels by American writer Erle Stanley Gardner (1889-1970), and also of a popular television series based on the novels.

from saying democracy is the best regime, because democracy may be the best regime and yet not be possible everywhere. The identification of the best and the legitimate is characteristic of a certain kind of doctrinairism which occurs in modern times from the seventeenth century on. I will speak of that later, but I would like to make clear from the very beginning that this is never meant by Plato and Aristotle. The best is not identical with the just or legitimate.

The concept of natural right is central in Plato despite the rarity [11][with] which the term occurs. But you must never forget, when Plato speaks of the idea of justice he means natural right, natural justice. Now Plato's Socrates is presented as a defender of justice by deed and speech against the detractors of justice against those who say that right is only conventional. This makes it all the more urgent to raise the question: Why does Socrates speak so rarely of the natural character of right? And I believe one can answer as follows: Because what men ordinarily understand by right is not simply natural but shot through with *nomos*, with convention. Think only of this provisional statement of Plato, provisional even if you understand [the *Republic*]; precisely when you understand the *Republic* you will find the official teaching of the *Republic* provisional. Think only of what appears to be just on the basis of the *Republic* and how many things which we regard, we all regard as just as a matter of course are denied there. Think only [of] what it means: the abolition of private property. How much of our notions, even of notions of justice in communist countries, is based on the presence of private property, and how much force. Think what it means: the abolition of the family and many other things. So what Plato—it is not important whether Plato means these particular proposals seriously; the main point is this: What Plato understands by natural right is rather remote from what we ordinarily understand by right, and this is probably the reason why the term natural right occurs so rarely there.

Socrates was suspected of being a subverter of justice or, as they put it, of corrupting the young. I must say a word about that. This is presented, this accusation, in a classic way in Aristophanes's comedy *The Clouds*, the main theme of which is precisely right or justice. At a certain point in that comedy there occurs a dialogue between the just *logos*, that is to say the just argument, and the unjust *logos*, two personages belonging to Socrates's school. The dialogue takes place in the absence of Socrates—you see, they are not puppets, marionettes—for the benefit of a pupil of Socrates, or a man who wants to become a pupil. The unjust reasoner is weaker than the just one, but he makes himself stronger than the just *logos*. This is a kind of caricature of the claim of certain sophists that they can make the weak cause the stronger one. Well, every defender of hoodlums of course tries to make the weaker cause stronger. I mean, there's nothing esoteric about that.

Now what is the argument then? The unjust *logos* asserts that right does not even exist, surely not among men; how unjust they are. But it is said to exist indeed with the gods. But look at the gods: Zeus dethroned and fettered his own father, and what is more a principle of right than respect [for] one's parents, one's father? The two arguments are requested by the chorus—[each represents] [12]the kind of education for which they stand, the ancient education on the side of justice, the novel education, of course, the modern education on the side of injustice. A brief sketch. The just *logos*: children have to be silent and orderly. They were not spoiled in the olden times. The music was traditional, cither playing. The education, the old education, made the victors at Marathon what they were, men of deeds, not of words: excellent training of the body, a strong sense of honor, respect for old age. I believe the issue is as intelligible and as present as it

always was and will be. The unjust *logos* argues as follows: You, the just *logos*, have spoken against warm baths as a sign of effeminacy because that makes men soft, but who was stronger and braver than Heracles, the son of Zeus? And baths of Heracles was the name given to hot springs, which clearly proves that Heracles took warm baths. Furthermore, the just speech blames spending one's time on the marketplace arguing, but Homer praises old Nestor as [. . .],[viii] as a man on the marketplace, as a speaker.

Then the unjust speech goes much beyond it by attacking the whole notion of decency and chastity and moderation in the name of the pleasures of the senses, and he accuses the just speech of teaching a life against nature. The natural life is the life of indulgence; and surely there is a *nomos*, a law which forbids this indulgence, and if you are caught you are punished, but you can easily avoid that if you learn the art of speaking. And the key argument again: What did Zeus do? Is Zeus, with his many amours, temperate? The end: the just speech admits defeat and deserts the camp of justice, a terrific thing. But this is not the end of the play, because Socrates is punished at the end. His school is burned down and so on and so on. So the message of the whole thing is this: the just *logos* cannot defend himself by argument. The just *logos* loses in speech, but it wins in deed. A kind of inarticulate but very powerful resistance helps the just *logos* against the unjust *logos*.

Now the most important point here, most obvious point at least, is this: What is the basis of the position taken by the just speech? Answer: the gods. The gods. It always[13] [comes] down to this. Now what do we know of the gods? Answer: the stories about them, the myths, and these myths clearly contradict right. The gods are presented in these myths as the opposite of models of justice. And the argument cannot be solved on this level. Now this is exactly the point which Socrates is presented as doing: that he puts right on a different basis, no longer on the basis of myths but on the basis of nature, of that new understanding of nature in terms of the "what."

Apart from the *Republic* the most important Platonic dialogue dealing with our subject is the *Gorgias*, and I must present this, because the presentation of justice in the *Gorgias* is perhaps the easiest way for understanding the later doctrine of the Stoics, more than the doctrine of the *Republic*. Now the *Gorgias*—well, one should not presuppose any factual knowledge [LS writes on the blackboard]: *Gorgias*. Now the *Gorgias* is a dialogue on rhetoric. Gorgias is perhaps the most famous Greek teacher of rhetoric, and Gorgias, who is the chief character in a way of that dialogue, says rhetoric may be used justly or unjustly without ceasing to be rhetoric, just like boxing. You can use boxing in a fair manner and in an unfair manner. It's still boxing. Rhetoric is then not intrinsically just. It must be subordinated to justice and regulated by justice. Hence the question arises: What is the just use of rhetoric? One can say that's the theme of the dialogue.

Now a pupil of Gorgias called Polus—I will write this name here, Polus; literally translated, "the colt," he is a rather violent and spirited young fellow—takes up this point[14] and defends rhetoric. And Socrates then goes to the offensive and says rhetoric is not an art, and he proposes this schema: What are the genuine arts? He makes this distinction: soul, body, and two arts in each case. Here,[ix] that's easiest—gymnastics and medicine, and corresponding to that, the legislative art and justice. Justice, this is the first distinction. And these two are together called the political

[viii] The transcript has a blank space here. The passage is *Clouds* 1055-58.
[ix] Strauss might be referring to a schema on the blackboard.

art. Is this intelligible? There is an art by virtue of which the body is made strong and healthy, gymnastics; and then there is an art which cures the sick body, medicine. Similarly, there is an art which makes the soul strong and healthy; that is called the legislative art. And then there is an art which cures the sick soul, and that is of course not psychiatry but the punitive art: jail, prison, gallows, and so on. It's called justice here because the Greek word for right, *dike*, also means punishment. Now all these arts aim at the best for soul or body, but then there is something which he calls here flatteries, i.e., sham arts. Sham arts. There is a sham art corresponding to each genuine art, and the sham art—for example, what is here? This is, I believe, cosmetics, obviously a sham art; say, that someone looks as if he were healthy without being it. No, cookery—I'm sorry, cookery comes here, and here is cosmetics. Cosmetics is improving: you know, when someone looks pale he is not being treated but he is presented as good looking by means of cosmetics. And there are also sham arts here: sophistry and rhetoric. The key point is this: the sham arts are distinguished from the genuine arts because the genuine arts aim at the good, and the sham arts aim at the pleasant. Now justice means here then the restoration of the health of the soul by means of punishment. The original production of health of the soul is a task of the legislative art, i.e., of a human art. Is there, then, no natural law or natural right? That's the question.

Now the result of the discussion of Socrates and Polus, which is the second part of the *Gorgias*, is this: justice is good. I do not go into the argument. Justice is good. Injustice is bad. To do injustice is worse than to suffer injustice. To undergo punishment, i.e., to be cured from injustice, is better than to remain unpunished. Accordingly, the use of rhetoric is not to defend oneself and one's friends but rather to accuse oneself and one's friends if one has done wrong. And if one may harm anyone one should defend one's enemies so that they will not undergo punishment and will remain wicked. That is, however, somewhat jocular. In other words, rhetoric is useless for him who does not intend to act unjustly.

At this point the third, the most impressive character of the dialogue appears, Callicles. He is an Athenian citizen, whereas the two others were foreigners, Gorgias and Polus. Now Callicles is presented as a lover of the *demos*, of the common people. He is of course not a democrat—he's the opposite of it—but he loves the *demos* in the sense that he wants to rule them. He has a passionate desire for them. And Socrates, as opposed to him, is a lover of philosophy. Now from here on, the case of justice is treated as identical with that of philosophy. Keep this in mind. In Aristotle the case of justice is not identical with the case of philosophy.

Now Callicles makes this assertion: To act unjustly is bad and base only by virtue of convention, not by nature. By nature it is bad to suffer injustice, to get hurt, not to inflict hurt, and the convention or the law is the work of weaklings with a view to their interests. They establish equality because that improves their lot. In other words, their justice has as unjust or selfish motives as the frank injustice of the others. According to nature the better man should have more than the worse one, and this is called by Callicles the law of nature. Socrates will realize this, Callicles tells him, when he abandons philosophy and turns to greater things, i.e., real man's work, to political life. The philosopher, Callicles says disgustedly, does not know the laws of the city and hence is wholly unable to defend himself if he is accused. You know, he is worse off than anyone.

Now Socrates argues first as follows. What does this right of the superior man to have more mean? In the first place, who are the superior ones, the stronger ones simply? Callicles says yes. But, Socrates argues very well, the many assembled are obviously stronger than the single outstanding individual, and the many lay down the laws treating everyone equally. Equality, i.e., to treat everyone like oneself, is then not merely conventional but by nature because it is established by virtue of the right of the stronger. There is no conflict between nature and convention. Someone who smiled saw the ironical character of the argument—that is indeed true—but on the other hand it shows that Callicles has not spoken very clearly. His reply is this: Well, don't be absurd. I don't mean mere brachial, muscular superiority; the superior man is superior not only in bodily strength but also in intelligence. The more intelligent man should get more than the unintelligent ones. Again, the question arises: More of what? Should they get more food, more drink, more clothes, more shoes? This all doesn't make sense. Then it appears the man most able to rule the city ought to rule the city. That's fine, but Callicles very foolishly adds with a view to their own interest, or rather enjoyment. In other words, they should get these nice houses outside of Moscow with special vodka and special caviar for that purpose. They should view the city to the satisfaction of their own desires: luxury, licentiousness, and freedom. This is the real life and this is happiness. Whereupon Socrates says: No, I think a moderate life is much better than a life of intemperance, and so by this argument the issue of justice is replaced by that of moderation or temperance. In other words, that the superior man should rule is o.k., but with a view to what? What way of life should they lead, and this is the issue, temperance or intemperance, moderation or immoderation? And this life of moderation, no longer of justice, appears to be the life according to nature.

Socrates restates the issue at this point very clearly. The issue is this: Is the good identical with the pleasant, as Callicles somehow asserts, or is it fundamentally different from the pleasant? And Socrates proves that the good is fundamentally different from the pleasant. And this is, by the way, not so difficult to prove because one of the arguments which Socrates uses is, for example, when you speak of a good man we do not, obviously, mean by that the man who has the greatest fun, has the greatest amount of pleasures. So we do not mean by good the same as by pleasant. I think that's a good argument. So the good man is not the man who has the maximum of pleasure. For example, a coward running from battle has much greater pleasure than the brave man who sticks it out, and we call the one a coward, i.e., a bad man, and the other a good man.

One can also state it as follows, coming back to what I said earlier, if the good is identical with the pleasant, there cannot be a primary common good because the pleasures are here understood as bodily pleasures. More generally stated, what Socrates had in mind: the primary phenomenon is not pleasure, but man's natural constitution. A man's pleasures differ from those of a donkey or a vulture. Why? Because a vulture or a donkey has a different natural constitution than man. Men's pleasures depend on human constitution. The human constitution is a fundamental fact, not pleasure. Only on the basis of such a thing as the natural constitution of man can there be something like natural law and natural right. This, by the way, became a backbone of the whole natural right and natural law tradition throughout the ages, and the very great change which has occurred in the seventeenth century in modern natural right can be understood from here: that here natural right or natural law is somehow divorced from the natural constitution of man, as I will show later. To return to Socrates, the end is the good in contradistinction to the pleasant. But now what is that good? To discover the good is not possible for everyone, Socrates says—and

this again refers especially to you[x]—but only to the *technikos*, to the man who possesses the knowledge or art involved. Therefore it becomes necessary to raise the question, What is a *techne*? What is an art or science?

An art or science requires knowledge of the nature of the thing to be treated and of the causes of what the art does. For example, the possessor of an art is able to tell you why he does what he does: that is the causes. And he must know the being which he treats, whether the being is a human body in the case of medicine, or wood in the case of the carpenter or whatever it may be. And every art does what it does with a view to the best. The artisan or technician looks away from the thing he immediately handles toward something, toward a form, an idea, an *eidos*, to be impressed on the thing on which it works. He looks toward some order so that the thing he is trying to produce, be it a table, be it a healthy body or a healthy soul, becomes orderly or well ordered. Now to apply it to our case, the physician of the soul tries to imprint the order of the soul, in contradistinction to disorder, on it. The art in this art, which was here called the legislative art, is preceded by the perception of an idea, of an order. So to apply it to our case here, the political art improves the citizens, makes the city good, and it does it by looking at something, at an idea. We must see what that idea is. The opposite, the sham art, flattery, is an art which pleases the citizens without any concern with making them good, satisfies all their desires, makes the city rich and powerful; it is therefore powerful but not good. And Socrates goes here so far as to say that all these famous statesmen of Athens, Themistocles, Pericles, and so, were all sham artisans, not genuine: sham politicians. The true political art makes the citizens just and moderate, makes them healthy in soul. A man with a sick soul must be prevented from enjoying many things which a man with a healthy soul may enjoy, and the man with a healthy soul may enjoy anything he likes. So the key point is to make good souls rather than establishing laws in the narrower sense. Justice regarding gods and men simply flows from moderation or temperance—[xi] All virtues flow from it and hence it is sufficient to be moderate in order to be happy.

First of all—there are quite a few questions—what is that *eidos*, that idea to which one must look in order to become moderate and generally good and happy? Where do we see that idea? Answer here given: in "this whole," this universe, which men therefore call "cosmos"—"cosmos" meaning originally something like ornament, good order—which is held together by geometric equality. The visible cosmic order, an ordered hierarchic whole, is the foundation and support of justice. This is the answer given in the *Gorgias*. But the question arises: In what sense does the visible order of the whole support justice? The whole may be as ordered as you please. There may be laws of nature, say, in the Newtonian sense. This does not yet necessarily mean that it supports justice. Is it true that the good man who contemplates this order and builds himself up, edifies himself—that's the original meaning of edification—in accordance with it will not suffer injustice? Of course not. He will suffer injustice, but this is said to be irrelevant. Suffering injustice does not affect the just man's goodness. Obviously not. Yet it is also admitted that suffering injustice is an evil. How can one avoid that evil of suffering injustice? Answer: political power or participation in it. You participate in political power even when you have only the vote, but there are better ways of doing that. If you have political pull, you have much more protection. But this, Socrates says, doesn't work. Look at the fate of Themistocles, Timon, and

[x] Evidently an aside to a student.
[xi] The tape was changed at this point.

Pericles, who all underwent all kinds of unpleasantnesses although they had very much political power. And above all, the attempt to avoid suffering evil requires one to do evil. I hope this does not need a long account. At any rate, that would be a good paper for an introduction to social science, a discussion of this proposition: Does the attempt to avoid suffering evil require one to do evil?

But now the other difficulty. May not the unjust man make a just man entirely miserable, blinding him, torturing him and his children and so on and so on? This can, of course, not be denied. It is not denied by Socrates for one moment. But is it true to say virtue is simply identical with happiness, as Socrates said, if this is the case? If the just man may suffer all these terrible things, can one then say it is enough to be just to be happy? Now the basis of the whole thing is of course the distinction between the good and the pleasant. Can one say, as Socrates does, that pleasure and pain are entirely irrelevant for happiness? This is the difficulty. Toward the end of the dialogue the following remark occurs: To arrive in Hades having one's soul fraught with many unjust acts is the uppermost of all evils.[xii] In other words, no evil which a man can experience in this life in the way of torturing and all other beastlinesses can be compared with the evil of coming to Hades with one's soul fraught with many unjust acts. In Hades it is no longer possible to do or suffer injustice, but only to be rewarded for justice or punished for injustice. That means while there is no sufficient support of justice in "this whole," the visible universe, there is sufficient support for it [in the] afterlife, in Hades: the punishment for the wicked[15] [there] and the just men are sent to the islands of the blessed. The just life is expedient after death. So in other words, the teaching regarding justice in the *Gorgias* depends on life after death. Socrates seems to need rewards and punishment after death, because without them the preference for justice would not be powerful enough. Justice is said to have cosmic support, but what is the precise relation between the cosmic order and the just human order? This remains dark. Is it because of this fact that Plato does not speak in the *Gorgias* of natural right, because what is intrinsically right is not sufficiently supported by the nature of the universe?

The just life is treated throughout the *Gorgias* as identical with the philosophic life. Why is this so? That is shown by the analysis of art or *techne*. [16]In order to be fully just, one must look away from the human being, the city and so on, which one handles, to the cosmic order; and only with a view to the cosmic order can you establish justice in yourself or in your city. But this is not quite clear, because in the same context an Athenian statesman, Aristides the Just, is highly praised, who surely was not a philosopher. In a word, the difficulty is that Socrates does not tell in this dialogue what justice is. The praise of justice requires that there be rewards and punishments after death. These rewards and punishments are the subject of a myth told by Socrates toward the end of the dialogue, but a myth is not genuine knowledge. The conclusion would be: There is no genuine knowledge of the most solid support for justice. The dialogue *Gorgias* does not tell us what justice is and what its support is. It merely praises justice. The dialogue dealing with rhetoric contains a rhetorical treatment of justice.

Let me say a few words about the relation of the *Gorgias* and the *Republic*. Both dialogues deal with justice. Both are tripartite, which is quite clear. Here is Gorgias, and here you have old Cephalus—those of you who remember the *Republic*—the old man, Cephalus, just as here the old man, Gorgias. Then you have here Thrasymachus, also a rhetorician by the way—oh no,

[xii] *Gorgias* 525c-d.

Polemarchus. I'm very sorry, Polemarchus. And here you have Thrasymachus. This is quite obvious and frequently observed. The difference is this, it seems to me: that the *Gorgias* is a rudimentary version of the *Republic*, and the proof of it is that only in the *Republic* is the question, What is justice, raised and answered and it is made clear—what is not made clear in the *Gorgias*—why justice is identical with philosophy. And this has to do with the fact that in the *Republic* the doctrine of ideas is explicitly stated, whereas in the *Gorgias* its place is taken by the visible universe. And in the *Gorgias* the theme is rhetoric; justice comes in only secondarily. In the *Republic* the theme is justice, and rhetoric comes in only secondarily. Above all, whereas in the *Gorgias* Plato leaves it at the radical separation or opposition of the good and the pleasant, the *Republic* claims to show that the life of the just man, i.e., of the philosopher, is the most pleasant life. There is not this radical opposition. In the *Republic* there is a solution to the question of justice in this life, a political solution at least on the surface, whereas in the *Gorgias* only life in the bad cities is considered, i.e., in unjust cities. And a last point connected with all these things: in the *Gorgias* nothing is said about the different natures, about the fact that not all men are by nature capable of being philosophers. Philosophy is preached as a goal for everyone, just as justice; whereas in the *Republic* this radical difference among men regarding the possibility to become philosophers, i.e., to be fully just, is crucial and even central.

Before I see whether there are any difficulties, I would like to make only one assertion now which I will be able later to develop if I have time, namely, that the view which is presented by Socrates in the *Gorgias* is again stated in the *Republic* by Glaucon, but this I will develop later. Now first of all let us see how far I have made myself intelligible, understood. Well, may I address a question first to you?[xiii] Are you able to formulate a difficulty beyond that which you stated in writing?

Student: Is your point in going through the argument of the *Gorgias* that an attempt is made there to base justice upon the visible universe, and that this attempt fails?

LS: You can put it this way. This attempt as made in the *Gorgias* fails. Yes. Well, in what precise sense does it fail? It is never suggested there that the order of the whole does not give us some indication about the order of the human soul, but it does not give us an answer—[17][except] at the price that we must be completely indifferent to pleasure plus self-preservation if we take justice seriously, and this is a rather tough proposition for almost all men. Is this clear? I mean, to say you must be just but this means you have to be wholly indifferent to pleasure, you have to be wholly indifferent to your self-preservation, that's very harsh, whereas the *Republic* does not say that. In the *Republic* your self-preservation is taken care of to the extent to which it can be taken care of because you are a member of a just society in which you are sure you will never be unjustly hurt. And of course, war, this is inevitable, this kind of danger to self-preservation. I mean, there is no remedy for that except a really reliable world order, world government, which is as impractical today as it has been at all times. Yes?

Student: Is the appeal to the sanctions of Hades that is made in the myth at the end, does this indicate somehow a failure to be able to find an adequate concept of justice within the visible order?

[xiii] Strauss addresses one of the students who submitted a written question.

LS: No. I mean, if you mean by "concept of justice" the content, this is fine, but the question is, how shall I say, the attractiveness or, as they say now, the motivation for being just is not clearly established as a necessity. And very simply stated, to be just means to be wholly indifferent to pleasure and pain and especially to self-preservation radically. This is different from what we ordinarily understand by justice, because there is somehow assumed that there is some harmony between reasonable self-interest and justice. I mean, not the self-interest of a completely mad, power-hungry individual but of a sensible man. That is not provided for here. This is a difficulty. Now Socrates says, of course, that this myth is not a myth, although he knows Callicles is going to call it a myth. It is a *logos*. Now the distinction between *mythos* and *logos* was by that time quite well known and it had roughly the meaning: a myth is a fable, and a *logos*, used in contradistinction to *mythos*, is a true account. And Socrates says: No, it is not a myth but it is a *logos*. But what does this mean here? That is not without irony. It means this: the account is partly based on what Homer says and partly on what Socrates has heard from unnamed men. This of course doesn't vouch for truth, and especially poets, who are known to lie in many things. But on the basis of these more or less dubious reports Socrates reasons, figures out, so to that extent, but only to that extent, is it a *logos*. It is a *logos* to the extent that it includes Socratic reasonings, but its premise—that there is a judgment of the dead after death—is of course not established. That is taken over from what people say, especially what the poets say, so it is in fact a myth; and the indirect proof of it is that the whole issue is taken up in a much more comprehensive manner in the *Republic*—which also ends of course with a myth, but with a different myth, a very different myth. I mean, I cannot possibly take up here the question of the Platonic myths in general, which one would have to take up to reach clarity, one reason being that I do not have clarity about it. But I have certain notions about that, indeed. But still myth is not, that is clear, cannot be as evident and as certain from Plato's point of view as a *logos* is. That's clear. Yes?

Student: I received the impression in the last two lectures that the best regime simply is not possible. Is that a correct impression?

LS: Yes, that's correct, in my view. Yes?

Student: Well, now on page 139 of your book on natural right you say, "But the best regime, as the classics understand it, is not only most desirable; it is also meant to be feasible or possible, i.e., possible on earth." Does that mean they meant it to be and then they discovered it wasn't?

LS: Oh, no, no, no. It's not that simple. I mean, there is surely a footnote in that neighborhood where passages are indicated which amply prove what I say. But you must make a distinction. Now listen to me. Forget about my book. The best regime cannot be best if it is not possible. I mean, you must never forget the ancients, the classics, are very sober men. They never said, as someone says in Goethe's *Faust*, "Him I love who longs for the impossible."[xiv] They were very pedestrian compared with that. They would say he who longs for the impossible is to that extent foolish. But an entirely different question is whether a given order said to be the best regime for certain reasons is in fact meant to be the best regime. Do you see? The best regime presented in the *Republic* is—that I think one can prove—not regarded as possible by Plato and hence [is] not the best regime. The best regime must combine the two elements of wisdom, which is amply

[xiv] *Faust*, part 2, act 2, line 7488.

provided for in the *Republic*, and consent, which is not provided for at all in the *Republic*; and therefore the practical solution is something, in the strict sense of the term, a mixed regime, mixed of wisdom and consent. [18]I mean, there are various forms which that can take and Plato presented what he regarded as the best possible in the *Laws*.

Student: Well, that raises a difficulty for me, because as you defined the term nature as growth or the term of growth, it seems as though that which is supposed to be by nature—that is the idea of justice about natural right—is not possible.

LS: Yes, but excuse me—well, we must make a distinction between the individual and the *polis*. And as far as the individual goes—permit me to state it very roughly, in general—it is possible for the individual to reach his full growth according to Plato. Not for all individuals. But there is, so to say—the ceiling for the individual is the perfection of man; the ceiling of the *polis* as *polis* is much lower, and therefore there is something essentially artificial in the *polis*, which does not mean that the city is not necessary and indispensable but it is something which is not—well, take a very simple example. The city is a particular society, i.e., a segment of mankind forms the *polis*. The line is drawn fundamentally arbitrarily—fundamentally—which doesn't mean that there are not good reasons of convenience, but they are fundamentally arbitrary. Take it this way: cities came into being frequently in ancient times by the settling together, [the combining][xv] of a number of clans. Now whether these seven clans or eight clans united was entirely an arbitrary matter. But once it was decided and, say, clan eight was left out, they were foreigners and this meant that their status was, in right, radically different from that of citizen—and that refers not only in this view to what we call positive law, but it has a much broader bearing, as you see from that fact that a variety of cities, of political societies, means the possibility of war. That's inseparable.

Now when you look [at] how the most simple roots of conduct are necessarily transgressed in war, wholly independently of whether the war is just or unjust—for example, not killing, not stealing, not lying, not cheating; it's a long issue—you see how grave that is. People whom you would ordinarily treat as friends, i.e., fellow citizens, are treated, by the fact that they are not fellow citizens, as potential enemies. Plato takes this very strict[ly] and, as I stated last time, the noble lie which is presented there, where the earth is replaced by the land, the territory, meaning that part of the earth, reveals the whole difficulty. The soldiers, it is said in the *Republic*—and the soldiers are of course that part which is active in war more than any other part—the soldiers must have the character of good dogs, and good dogs are characterized by the fact that they are nice to acquaintances and nasty to strangers. The soldiers must have this quality. And Aristotle says quite well in the *Politics*: One mustn't be nasty to anyone. I mean, sure. But then when you look at the facts of the case, especially war, you can say in a sense the decent soldier is not nasty to the enemy by killing them and so on and so on, but you can also say it is a rather subtle distinction between what the soldier does to the enemy and nastiness. You know this is a difficult question. One can say Aristotle's view is surely, as he states it, the nicer view, but perhaps Plato sees the situation, admits the situation more frankly than Aristotle does. Aristotle has altogether a certain quality which—I do not know everyone would agree with me there—compared with Plato, of this wonderful woman, Jane Austen,[19] if you know who she is[xvi]—she never speaks of

[xv] The transcript has a blank space here.
[xvi] Jane Austen (1775-1817), English novelist.

the really terrible things, which makes her so very charming. But that means also,[20] being a great artist, of course, she lets us divine the things of which she doesn't speak. Aristotle does the same. Plato speaks with great frankness. This is the question. Now how is this related to the overall issue? In other words, what was your initial question?

Student: [. . .]

LS: This ceiling, that was the question. According to Plato there is a ceiling to the city, a ceiling which is incompatible—which is at least in a tension to the highest perfection of man. Now when Aristotle teaches that the city is natural, that is in a way his criticism of Plato. Plato's *polis* is not natural in the Aristotelian sense. Something may be a necessity for man as man and in this sense natural, and yet in another sense also not natural for the reason given. Let me state it—how can I explain this most simply? It is possible to say, of course, that the political society is in perfect agreement with man's highest aspirations, in the sense that they necessarily find their fulfillment within the city. In a way, Aristotle seems to say just that. But there have always been people who denied that and who said that what is highest in man as such transcends the city. I mean, it is clear from the religious view; I do not have to point that out. It is also clear, in a way, from the modern liberal view: the demand for a private sphere impervious to government, to political decisions. There [it] is also implied [that] there is something most important; the highest is transpolitical. Do you see that? Plato also said that, only Plato says there is one and only one thing of which one can justly say that it transcends the city, and that's philosophy: not comedy, not tragedy, not anything else, because comedy and tragedy obviously—or literature, as we say, and poetry—obviously affect the morality of the society [and] are therefore subject to control by the society. But not philosophy: in its nature it cannot be subject to that. Aristotle, as I say, seems to say [something else]—but in fact he admits of course also that philosophy transcends the *polis*. Yes?

Student: My problem here is that man is by nature social. Now if man is going to be capable of reaching a higher ceiling, of reaching that idea of justice which is then natural right, how can he not be capable of forming a society in which it can be reached also? Man is by nature social.

LS: Yes, that is a clear question and permits me of a clear answer. Plato says—I mean, again stating it textbook-wise—to be just requires to have a full grasp of the idea of justice. It is not identical . . . but that's a necessary if not sufficient condition. Is this clear? Now Plato further says you cannot possibly have a clear and full grasp of the idea of justice if you have not had a very stiff training: book 7 of the *Republic*, a very stiff training. And secondly—and firstly, rather, you must have certain natural gifts for acquiring that training. These gifts are not possessed by all men, nor are all those gifted by it given the training or willing to undergo the training; hence a fairly small minority of men has the adequate grasp of the idea of justice. This being the case, you cannot have a society of just men. Differently stated, and perhaps coming nearer to present-day discussion, if you understand by a rational society a society where every member, or at least the large majority, is rational, then Plato says a rational society is impossible. You know? It is impossible. You can have a society which comes closest to reason. A society comes closest to reason if its ruling part consists of rational men, but this[21] of course depends on all kinds of circumstances, and the greatest difficulty is a very simple one. These men have to come to power; whether by election or by any other title they must, at least, be recognized as

deserving to be the rulers. They must be recognized as deserving to be the rulers by the nonrational men. If you state it abstractly, this difficulty is very clear. How can nonrational men recognize rationality? I know it is not quite as bad as it sounds, but stated generally and baldly, it seems to be utterly impossible. How can unmusical men decide who is the best musician? How can men knowing absolutely nothing of physics distinguish between first-rate physicians and non-first-rate physicians,[xvii] and so on? This is the problem, the problem of rationality and nonrationality combined. Now the difficulty is very great and one must state it in bald terms in order to see the grave difficulty, and the difficulties are so great that at a certain moment men decided to turn the whole thing around and say if we start, as Plato and Aristotle too does, from the wisdom angle, we can never reach a practical solution. It will be theoretically very clear, but what can you do with it?

And then let us start from the other angle, let us start from the consent angle and see then how we can get a society on a consent basis, and then see how we can get in or smuggle in wisdom. This is a modern—it is a modern problem. I think that sounds very crudely expressed, but I believe it is so that this happened. This was the great change which was made in the seventeenth century; and if one has understood the difficulties of the classical position, one can understand very well that people tried to turn the whole thing around, but one must also see that the modern position is not free from difficulties. I mean, you only have to consider what representative government was meant to be: the device by which the unwise would elect their most virtuous and wise fellow citizens. I mean, if you read the modern literature—well, in present-day political and social science, political science, the whole thing has been abandoned. Yes, we know that. But as long as and to the extent to which the discussion still takes place and has taken place, you have seen what difficulties there are. Read Mill's *Representative Government*, for example. Read *The Federalist Papers*. There is no elegant solution possible on either presupposition. Only the modern solution has at first glance a much greater plausibility, because that seems to be immediately political, whereas the classical seems so abstruse, but it [22]is not abstruse.

Student: Wouldn't the logic of Plato's argument compel him to assert that at least the individual is capable of reaching the ceiling as if outside society, or is the external justice necessary to the good society?

LS: No, that is very good, what you say. Very good. That is exactly what Aristotle says, discusses at length in the third book of the *Politics*, of this superior man, and of whom he says he cannot be treated as a part. He is the whole. Now Aristotle knows that this is a purely theoretical problem, but it is necessary to think it through in order to understand the essential limitations of civil society. Read the third book of the *Politics*, second half of the book.

Student: Does Plato . . .

LS: Yes, sure. Fundamentally, there is in this respect no difference. In this respect, no.

Same Student: In other words, the external justice is part of the totally good life, the perfectly good life.

[xvii] This is as it appears in the transcript; it is possible that Strauss said "physicists" and not "physicians."

LS: Yes, but the question is then—yes, this leads to very great difficulties, because our ordinary understandings of justice all presuppose a kind of equality of a large body of citizens. That is Aristotle's notion of natural right. And this becomes a question with a view to the problem of wisdom. I think we cannot fruitfully discuss the whole thing before I'm through with my account of Aristotle, which of course is not meant to exclude clearing up of particular points. May I say one thing? I hope to be able next time to come to Aristotle, and if you could bring with you your translation or, if possible, text of the fifth book of Aristotle's *Ethics*, because there's only one page and we must discuss it rather thoroughly. What did you want to say?

Student: Did Plato in the *Republic*—did he finally conclude that the good society is not possible in the *Republic*, or did he do it later in the *Laws*?

LS: Well, he never said so, even in the *Laws*, quite explicitly that it is impossible. He comes nearest to it when he says in the *Laws* that this scheme of the *Republic* is possible only among gods and sons of gods, which would seem to mean it is not possible among human beings. Yes? That's all that we need. I mean, this admission would seem to settle it, but that would lead—we would have to go into the question, What does Plato understand by sons of gods? Maybe he means by it first-rate men. It is hard to say. So in the *Republic* he insists all the time on its possibility but he makes the conditions for its actualization ever more difficult, [so] that if one uses one's head in reading, which I believe one should do, then one sees it is impossible because when he says only philosophers are kings, then you can imagine that it's possible. Everyone has heard something of Marcus Aurelius—you know, this kind of thing. Pardon?

Student: . . .

LS: [23]What Plato does is this, in my opinion: he presents the solution to a problem of the squaring of the circle, and he shows how the circle could be squared if it could be squared, meaning how the harmony between *polis* and philosophy can be brought about [and] under what conditions. But when you read it carefully, and especially the end when he says not only rule of philosophers but expulsion of everyone older than ten from the city, then he lets the cat completely out of the bag, because when you think of it, where would you ever find citizens who would hand over government to a philosopher or philosophers with this rider attached? I mean, they might be in a terrible situation in which they would say, well—you know, just as the English accept[ed] Winston Churchill after all in 1939, you know, when[24] they would have done almost anything when they accepted also Winston Churchill.[xviii] So this kind of thing happens, but that they behaved toward their own government and give him a right which perhaps not even the worst conqueror would do more than that, yes—I mean, take their children away. [25]You know what happens in a case of conquest in olden times; [26]the families were not kept together, and so[27] anything would be preferable [28]than to do that. It is impossible; and there are other arguments by which one can support it. But, as I say, one can very well show by a fictitious example, by a deliberately fictitious example some essentially important things. For example, the point mentioned by a student before, that the best regime must be possible and what this question of possibility means, i.e., [whether it is] compatible with the nature of man. This character of the

[xviii] Winston Churchill, who had been out of government since 1929, was appointed First Lord of the Admiralty by Prime Minister Neville Chamberlain in 1939. As criticism of the government increased, Chamberlain resigned as Prime Minister in 1940 and Winston Churchill was chosen to succeed him.

discussion is exactly the one which would have to be applied to the serious question of the best regime, and it is here ironically applied. But one can learn to distinguish between the intrinsically tenable and the one which is fundamentally playful, although the play is a very serious play. The play is meant to shows us what the limitations of our expectations on any political arrangements must be. So next time I will say a few words about Plato and then turn to Aristotle.

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[1] Deleted “but.”
[2] Deleted “let us.”
[3] Deleted “but if you”
[4] Deleted “into being”
[5] Deleted “is,”
[6] Deleted “in.”
[7] Deleted “And now—.”
[8] Deleted "of course it presupposes—.”
[9] Deleted “ever—has.”
[10] Deleted “this—.”
[11] Deleted “of.”
[12] Deleted “represent each”
[13] Deleted “turns”
[14] Deleted “and says”
[15] Deleted “in.”
[16] Deleted “It is necessary—.”
[17] Deleted “but.”
[18] Deleted “And how they—.”
[19] Deleted “now—you.”
[20] Deleted “but.”
[21] Deleted “is.”
[22] Deleted “is as little’
[23] Deleted “that is not—I don’t believe”
[24] Deleted “it was—.”
[25] Deleted “I mean.”
[26] Deleted “I mean.”
[27] Deleted “why should—I mean.”
[28] Deleted “than to do.”

Session 8: October 31, 1962

Leo Strauss: [In progress]—the right order of the soul or, which is the same thing, the natural order of the virtues to which the legislator must look in making the laws. The difficulty regarding the Platonic natural right teaching is this: justice is primarily the social virtue regulating men's relations to others; and by justice one understands, to begin with, giving or leaving or assigning to everyone what belongs to him. But justice is also said to be good, and giving or leaving to everyone what belongs to him is not necessarily good. He may misuse it. If justice is to remain good, the whole social order as generally in existence at all times must be replaced by a radically different order, which order alone is then strictly just. That's the teaching of the *Republic*. And the characteristics of that order are absolute communism and the absolute rule of the wise. What is by nature just is to give to each what is good for him by nature.

Now it is clear, if this is by nature right it must be diluted very considerably in order to be brought into harmony with what is possible. It must be diluted by something which is not by nature right, which is only a kind of inevitable right but not natural. And this other thing by which natural right must be diluted is that which is acceptable to the unwise who, among other things, insist on having property of their own, wives and children of their own, regardless of whether they deserve to have them and are able to use them properly or not. This is a very rough sketch of what appears from the *Republic* and the *Laws*.

I turned then to a discussion of the other Platonic dialogue dealing with right or justice, the *Gorgias*, and I'll repeat the main points. Socrates opposes the view that all justice is conventional. What then is by nature just, by nature right? Again, [it is] the right order of the soul and of men's mutual relations, and this is to be brought about by the legislative art—an art, not mere fiat. Every art is based on nature; in the first place, on that on which the art works, its material on which it imprints an order or form, as the shoemaker imprints the form of the shoe on the leather, and this form itself. Now as regards that particular art, this artisan called the legislator, toward [1][what] does he look when imprinting the right form of the human soul? The answer is he looks to this whole which is therefore called *cosmos*, order, because of its orderly character, which is held together by geometric equality, by proportionate equality: unequal things to unequal people, equal things to equal people. The legislative art is based on cosmology, on the knowledge of the whole. The fact that geometric equality or, as we can also say, a hierarchic order is the cosmic principle is the support for justice.

Well, in this respect there is no disagreement between Plato and Aristotle. When you read the beginning of the *Politics*, the first book, when he speaks of the relation of the inequality essential to nature, the hierarchic order, that is the support of justice for Aristotle as well. The alternative rejected in the *Gorgias* is the identification of the good and the pleasant. Socrates asserts, and in a way proves, that the good is different from the pleasant, so much so that there is no relation whatever between the good and the pleasant. The best has nothing to do with the most pleasant. Virtue hence appears to be the control of pleasures, and this means that virtue is essentially self-control or temperance or moderation: in Greek, *sōphrosynē*. Justice is as it were replaced by

moderation or self-control. Justice flows from self-control. A man who is well ordered in himself cannot but be just; that seems to be the implication.

Now the radical distinction and even antithesis of the good and the pleasant leads to the following consequence. Justice requires complete indifference to the pleasant and even to self-preservation. There is no harmony between justice and well being except after death, and that is brought out in the myth at the end of the dialogue. Now the view presented by Socrates in the *Gorgias* is presented within the *Republic* by Glaucon. I would like to say a few words about it, because I think some understanding of the *Republic* is indispensable if one wants to see what the issue of natural right is about.

I cannot assume that every one of you has read the *Republic* or that he remembers the *Republic*, so I must remind you of some[2] obvious facts. In the first book Socrates refutes the thesis of Thrasymachus, the famous teacher of rhetoric, according to which justice is essentially conventional. Now this refutation is not very clear and sound, and Glaucon is justly dissatisfied with it; and he asks therefore Socrates at the beginning of the second book, first: To what kind of good things does justice belong? And Socrates says justice belongs to those good things which are choiceworthy both for their own sake and for the sake of their consequences, such as health, for example. But most men regard justice as being good in the sense in which taking medicine is good; that is to say as a necessary evil, or perhaps even as a necessary good, meaning it is not good in itself. They hold that justice is good only because of its consequences, that honesty is good only because it is the best policy. Now Glaucon wishes to see that justice is also good in itself; therefore one must view justice by itself while disregarding completely its consequences. Accordingly, he draws a picture of the perfectly just and the perfectly unjust men taken in themselves without any consequences attached to them: the perfectly unjust man who does not seem to be unjust but is regarded as just; and then the perfectly just man on the other hand, who does not seem to be just but rather to be unjust. Now it is clear that if we strip the just man of all good consequences of justice which derive from the fact that he is known to be just, he leads a very miserable life. He lacks all pleasure and has no concern for self-preservation, and he is therefore completely miserable, whereas the perfectly unjust man who pretends to be just cleverly and is regarded as just by all his fellow citizens leads a wonderful life.

Now Glaucon commissions Socrates to prove that the perfectly just man who possesses nothing but his virtue and his justice is perfectly happy because he is so perfectly just. Glaucon commissions Socrates, in other words, to prove what Socrates has asserted in the *Gorgias*: that the man concerned with justice and nothing else, disregarding completely pleasure and self-preservation, is perfectly happy. There is one great difference, however, between Glaucon's just man and the just man sketched by Socrates in the *Gorgias*. Glaucon's just man lacks art, *techne*, and hence, and [all] the more, philosophy. He is a simple man, a simple man who has no *techne* of any kind. Now it is important to see that when one looks at the *Republic* as a whole that Socrates does not prove what Glaucon wants him to prove, namely, that Glaucon's just man is happy because he is just and has no intellectual perfection, no art of any kind. On the contrary, Socrates only proves that the philosopher as a truly just man leads an intrinsically pleasant life. This much about the relation of the two dialogues and the light this throws on the Platonic doctrine of justice. To repeat the key point: all certainty as to the meaning of justice is

insufficient if it cannot also be shown that justice, properly understood, is good. That is the key point.

One can also say that the paradoxes of Plato regarding this subject are all due to this fact: that what we ordinarily understand by right is not according to Plato by nature right. Take this example which I mentioned before: to give or leave to everyone what belongs to him. That is what we ordinarily understand by right. This is not by nature right, because what belongs to a man is here defined by law and the law is not necessarily wise and salutary, and therefore all the difficulties. And if it is thought through, then you arrive at the solution that only that can truly belong to a man, what is by nature good for him, which he cannot but make good use [of].

I would like to illustrate this position by a few more examples. Let us take simple rules of justice. For example: first come, first served. Is this simply valid? Of course not. Only if all comers are equal. Let one comer be a pregnant woman. Let one comer be a man on very urgent public business. Would not justice require that they come first, and not the first comer? So one would have to say: All right, equal things for equal people but unequal things for unequal people, whatever the inequality may be. Men are surely equal in some respects and unequal in others. Not all equalities and inequalities are relevant here. For example, that someone should be particularly good looking or bad looking would not be a serious consideration. The politically most relevant inequality is that in regard to wisdom or prudence. Here we seem to have a clear natural principle, but as I have indicated before, according to Plato this must be qualified by consent, consent on the part of the unwise; that is to say, of those who as such would seem to have no title. This is not a natural right. I take as another example a story taken from the first book of *Kings*, chapter 21. I read only the most necessary verses.

"And it came to pass after these things that Naboth the Jezreelite had a vineyard which was in Jezreel by the palace of Ahab, king of Samaria, and Ahab spoke unto Naboth saying 'Give me thy vineyard that I may have it for a garden of herbs because it is near unto my house, and I will give thee for it a better vineyard than it, or if it seems good to thee I will give thee the worth of it in money.' [Fair, isn't it?—LS] And Naboth said to Ahab, 'the Lord forbidded to me that I should give thee the inheritance of my fathers unto thee.' And Ahab came into his house heavy and displeased because of the word which Naboth the Jezreelite had spoken to him for he had said 'I will not give thee the inheritance of my fathers.' And he laid him down upon his bed and turned away his face and would eat no bread. [So much was he concerned with getting that vineyard—LS] Now Jezebel his wife came to him and said unto him, 'Why are thy spirits so sad that thou eatest no bread?' And he said unto her, 'Because I spake unto Naboth the Jezreelite and said unto him, "Give me thy vineyard for money or else if it please thee I will give thee another vineyard for it."' [You see, he doesn't say to his nasty wife that he had spoken of a better vineyard—LS] 'And he answered, "I will not give thee my vineyard." And Jezebel, his wife, said unto him, 'Does thou not govern the kingdom of Israel? Arise and eat bread and let thy heart by merry. I will give thee the vineyard of Naboth the Jezreelite.'"[i]

And then she makes a kind of judicial[ii] murder and with great success and Ahab gets his vineyard. What a famous story about justice. Now let us see what light this [sheds]—how this

[i] Kings 21:1-7.
[ii] In the transcript: "judicial (?)"

would have to be analyzed from the Platonic and, in a way, also the Aristotelian point of view. Now, that the action of Jezebel is flagrantly unjust and that Ahab's original procedure was fair, I think everyone will admit unless he is misguided by some methodology. At any rate, no one can deny that Jezebel acted illegally and Naboth and Ahab acted legally. But the positivists will say: Why should one prefer acting legally to acting illegally? Ultimately that's a nonrational preference. Some like legal action; others don't. Conventionalists, with whom Socrates argues in the *Gorgias* and the *Republic*, would say this:[3] The case for law as a necessary evil for the many is very strong, but it is indeed only a case for a law as a necessary evil for the many, not for the really [strong], for the *hombres*, for the he-men. And from this [point of view][iii] they would ultimately say Jezebel is of course in a much better position because she is not exactly a he-man but a she-woman, if I may say so.

But let us now turn to[4] slightly more [. . .] analysis. Now what is the background of this argument? Kingship: kings are instituted for the common good. If the vineyard had been needed for a public purpose, say, for making a ditch against tanks or whatever it may be, it could have been taken away from Naboth justly, but of course [with] fair compensation, because there is no sense in taking it away from one single citizen and all other citizens retain their possessions. It is unfair that a single man should bear a public burden which no one else bears. Yes, but that is not the ground given here. The ground given by Naboth is the sacredness of the inherited estate or lot. This is the key point. I mean, he does not refer to these simple principles to which we referred. He has a very specific one: the sacredness of the inherited lot. And this is obviously not a universally valid principle, as you know. In all modern societies this has long been abolished.

Now how does it look from Plato's point of view? Now Plato would say the principle to which Naboth appeals is the sound one. In the *Laws*, the polity of Plato's *Laws* is based on this principle that the inherited lot cannot be alienated. That's a grave crime. This sacredness of the inherited estate is the most wise institution possible. Of course—that is implied by Plato—it is not possible always to have that best practical polity, and then this law would have to be changed. But from no point of view can there be any question that Jezebel acted most unjustly and not merely illegally. May I illustrate this by a funny story in a well-known comedy, *Arsenic and Old Lace*.[iv] You remember—most of you will have seen it—there are two old ladies who kill old bachelors in order to make them happy, and they do this with the best conscience. And then their nephew comes in, observes this, is quite shocked, and then he tells them, quite surprised that these nice ladies could do such a thing, "What you do is wrong." It's not only against the law—you know, this is [what is] meant by the distinction between unjust and illegal. Well, so there is no question from any sensible point of view that Jezebel acted unjustly, and here there is then a principle of natural right involved. But what is the difficulty? Our certainty as to the justice or the injustice of this case depends decisively on the fact that it is a well-defined case. Given all these circumstances, no sensible or moderately honest man can doubt that Jezebel acted unjustly. Stated more generally, what is by nature right results in the individual cases rather than in the general rules. Justice means to assign to each what is good for him.

[iii] The transcript has a blank space here.
[iv] A 1939 play by Joseph Kesserling, made famous by a 1944 film adapation directed by Frank Capra and starring Cary Grant.

Now if Naboth had been—the same legal rights, but [if] he had been an old bachelor who had used his vineyards for all kinds of excesses, including [. . .][v] disfiguring the [landscape][vi] and the king would have made a beautiful park, we all would say [. . .] the action of Jezebel is impossible, but then Ahab's demand and perhaps even some proceedings against Naboth would have looked very different. One also would have to raise the question, of course, regarding the original title: that in this state of affairs where fundamentally all property owners have the same title, whether as king or commoner, the action of Ahab or his wife is perfectly impossible. But what about the original justice of the title? Conquest, probably. Does conquest give a perfectly clear title? No, of course not mere conquest, without going into the details of the case, but there is something like prescription or time out of mind. This estate belonged to this family, and that to that. But this principle of prescription is a very complicated principle. It is practically inevitable, but is it so clearly right that at a certain time one simply stops raising the question of justice? It is a convenience without which human life is impossible, but can one say that this is simply just? That's a very great question. From Plato's point of view, no law or rule of any kind can be simply just because of its very universality and generality. There will always be exceptions, and therefore there are rules of justice which are for all practical purposes the rules of justice, but not unqualifiedly. There will always be exceptions. This much about the Platonic doctrine of natural right. Now I would like now to turn to Aristotle, but if there is any point which anyone would like to raise now regarding Plato in particular, that's the moment. Yes?

Student: [. . .]

LS: Yes. The *Republic* is from one point of view truly the model of a just order as Plato sees it, because the rulers decide all cases on their merits. I mean, there are surely certain very general rules. For example, this kind of people belong to the moneymaking class; these belong to the warriors, and these belong to the philosophers. Yes, but who belongs to what? These decisions, where to draw the line: that can only be done by men of the greatest competence. No one possesses any property, but he gets what is good for him and the city to possess, and so on. Now surely this is not possible. This I think is the clear message of the *Republic*: it's not possible. But because it is not possible, all justice which is possible is imperfect, and that means in Plato's language all justice which we have is shot through with convention. We never get the pure natural right. We have rules of thumb which are good for most purposes, but none of it universally. Take such a rule like not stealing. Everyone admits that there are extreme cases: when someone stealthily takes away from another man what he absolutely needs in order not to die, it is not unjust. And some qualification of one kind or another always arises. And I think one does not misstate the Platonic view if one says the clearest cases, where you can definitely say that is so, are the well-defined individual cases like the case of Naboth which I read. In other words, the universal rules are not truly universal; they are always subject to exceptions. But the well-defined case may very well permit of one and only one decision and is to that extent—the decision is unequivocal in a way which the universal rule is not. Is this an answer to your question? Yes, Mr. Boyan?

Mr. Boyan: In what does Plato sit down and diagnose and define the exceptions?

[vi] The transcript has blank space here.

LS: Yes. You mean to say, if we have certain—say, a sum total of rules of justice; say, a finite number, of course, and then if there are exceptions there must be a single principle of regulating the exception. Yes? That's what you mean. No, I mean if one looks at your question, there must be then two sets of principles: one, those generally valid; and then the principle regulating the exceptions. Is this not clear? Must you not say that? Yes, one can give one simple answer: the common good. If some decision in a given case—if the application of the alleged universal rule in a given case obviously is harmful to the community as a whole and to some extent even to individuals, then [an] exception [is to be made]. Also considering the gravity of the situation. There are minor inequities where no sensible judge would deviate from the rule, but a big inequity is another matter. Yes?

Student: You said that in the *Republic* Plato does not prove what he has been asked to prove, but he adds the concept of philosophic knowledge to this just man in order to [do so]. Now does this indicate to you that Plato cannot come to any conclusive proof without adding the concept of philosophy, that is absolutely necessary for this just man that he be wise and philosophic?

LS: Yes, yes, sure, absolutely. There is no question. The same is, by the way, true of the so-called Stoic wise man of whom I have to speak later. The Stoic teaching is so important because that is the first emphatic teaching of natural law as law. It turns also around the wise man who is a philosopher. That the Stoic view of the philosopher—well, the Stoics were not men of the transcendent genius of Plato, and therefore what they say about their wise man reads rather arid compared with what Plato says. That is irrelevant for our present purposes. I'll take that up. Yes, Rabbi Weiss?

Student: What about such a rule as it is better to suffer injustice than to do injustice, which I think is stated in the *Crito*?

LS: Yes, also in the *Gorgias*. Yes. Yes, but you see that is a rule of such a generality, because what does it mean, "to do injustice"? What are the specifics of it? That one can say, well—what does it mean in a concrete case? [5]Transgression of a law is of course not always unjust. That you would admit, I suppose, yes? Because that is a case most clearly discussed in the case of Socrates, who as you know died obeying the laws. But he also makes clear[6] why he obeys these laws: these laws are good enough to be obeyed. But if the Athenians would lay down a law forbidding philosophizing, which they legally could, then Socrates would not obey it. This is another matter. Now, but what does it mean, not to harm anyone? In a rough way, it is clear. Socrates doesn't steal; he doesn't rob, and so on. That is clear. But can you give me a specific example? Is it not in this sense tautological, that it means justice requires that we act justly? And "act justly" means not to do wrong to anyone. Therefore, I think it does not in itself help. The thesis says only generally, no man becomes degraded by what he suffers but only by what he does. That's the meaning, whereas Callicles's point is man becomes degraded by what he suffers. If someone boxes Socrates's ears, that's an unbearable thing which cannot be tolerated under any condition, to say nothing of having drunk watered poison or so.

Student: [. . .]

LS: Yes, sure, but what is Socrates's whole explanation of that? What does he say? It was an illegal action. Just as in the trial of the generals after the battle of Arginusae, the people, indignant, wanted to condemn and execute these nine generals in one sitting, and that was against the law.[vii] Only one case of this kind could be handled. And Socrates, who was in charge at the time, refused to deviate from the law and became very unpopular because of that. But his point was, he acted, he upheld the law, the positive law of Athens. Surely the reason why he did that is because he regarded this as a sensible law. If it had been a stupid law, I don't know what he would have done, whether he would have been so punctilious in complying with the law. [7]The famous cautions which men have established in different ways at different times for preventing judicial murders and [8]this kind of thing are sensible laws, but no one would say that they are natural laws. They are based on some natural law principle, of course, which means simply that the purpose of penal justice is to punish the guilty, not the innocent. That's obvious. You know? You can also say that. In a way, that's a very substantive principle but it is also of such a universality that you have to define what are punishable actions, to give the meaning. How far are they defined by nature? And then if they are defined to some extent like, say, property, theft, robbery and so on, are these prohibitions in the most general way universally valid? That's the difficulty. Yes?

Student: In the *Apology* Socrates says that the only reason that he'd like the Athenians to save his life is that it would be bad for Athens if they kill him. So I wonder—

LS: I didn't remember the first part of your statement.

Student: The only reason he might be pleading to Athens to spare him is that [Athens won't be harmed][viii] so that I wondered, if it's worse to do injustice than to suffer it, doesn't the just man—it's kind of silly, but doesn't the just man act unjustly by permitting others to feel unjustly? Doesn't he have a responsibility?

LS: Yes. Very well. I think the *Crito*, well understood, is a beautiful example of the Socratic–Platonic view of justice. Yes, but there are various principles involved. The other principle is, of course: Should one disobey the law if one derives private benefit from such disobedience? Yes? Now externally viewed, Socrates's action would be to elude a law or even to transgress a law, namely, not to escape from prison after you have been legally condemned, for strictly private reasons, because he wants to save his life. And he has to balance these considerations. But this is exactly the point. The balancing of these considerations shows the fundamental difficulty: that none of these rules is universally valid. Socrates seems to say in the *Crito* [that] one must obey the law, the positive law, under all circumstances and regardless of what the positive law says. And that is not true. I mean, it is crudely presented that way because for the purpose at hand that's sufficient.

[vii] The Battle of Arginusae, which took place in 406 BCE during the Peloponnesian war, saw an Athenian victory but also a disaster, when a storm prevented the rescue of twenty-five ships that had been disabled in the battle, and the consequent death of thousands of sailors. The generals in command were deposed; six were tried, convicted, and executed, including Pericles the Younger.

[viii] The transcriber notes: "several inaudible words here."

Student: I'm having some trouble understanding justice . . . on nature. If the state is by nature it seems unjust or at least partially unjust. I gather that the state can't be just if wisdom doesn't coincide with strength.

LS: Yes, now strictly speaking, in Plato's view. Of course, yes.

Student: And this would seem to indicate to me that by nature the community must be at least partially unjust; and if that is so, how is it that justice can be founded on nature?

LS: Well, it would only mean—I see your point. In a way, that is what I have been trying to explain both at the beginning of today's class and last time. It concerns the fact that[9] if the *polis* is a fundamentally problematic thing, meaning on the one hand it is undoubtedly necessary, and on the other hand it has essential limitations and it deviates, in a way—it is in one sense according to nature and in another sense against nature—then the justice you can have in a *polis* can only be of a questionable character, limited character. I mean, all the many people who have rebelled against war and alien and sedition acts and all this kind of things were somehow prompted by such a feeling, you know, that the state is in this sense inhuman. Plato admits that, but Plato, being thoroughly unsentimental, says this is absolutely necessary. Without these institutions like war, capital punishment and so on, the situation of men would be still worse, and there is something questionable there.

Now by the way, the theoretical—I mean, the merely theoretical proof of the fact that this was Plato's view is very simple. Nothing is strictly speaking just according to Plato except the idea of justice itself. So not even the individual in the highest case can be perfectly just, but still less the city. In the *Republic* in 427—that must be toward the end of the fourth book—there Socrates says to Glaucon, "Now let us look at the *polis*," which they have founded. Where in it will be found justice and injustice? There is some injustice. Well, I gave this example: how can you really make a fully just decision that X should become a blacksmith and Y should become a warrior? I mean, then at a certain point you have to toss coins, and that means to do something which is no longer rationally defensible except on grounds which are not fair to the individuals, which are fair enough to the city. That is another way of stating it. These two considerations of justice—what is good for the community as a whole, and what is good for each individual—these two considerations are heterogeneous and there will be cases where the two considerations collide, and that would show an essential limitation of justice. Mr. Boyan?

Mr. Boyan: [. . .]

LS: Well, there is no comparison between the good protected by the law, property, and the good here endangered by it, life. That's the simple reason. Yes? That's simple. But surely[10] these deviations can of course not be arbitrary. That's impossible. Then it would be clearly unjust, an arbitrary deviation. But if it is a rational and sensible deviation, then of course it might have a principle, and one way of stating the difficulty was the one of which I reminded myself when answering to the lady. The good of the *polis* and the good of each individual are not in all cases in harmony. He requires the greatest harmony, but you can never get it fully because of the fact that they are divergent principles which in a rough way agree, but not exactly.

Student: . . . it is not the harmony of the universe that natural justice should indicate that there is, and the deficiency of his theory is found in the attempt to extend it into the city where it just cannot be done? That it wouldn't [. . .] to decree by the very talented gifts that so many men are suitable to the soldiers as such were needed by the state, so many as blacksmiths, so many as whatever you have, so that the king in figuring these things out was in exact harmony with nature—

LS: Yes, that is true. I mean, that would be indeed the simplest. But what about—to use the Aristotelian language which is not entirely inappropriate in the case of Plato: What if matter has a certain recalcitrance to form? Then you cannot do that. Then there will always be complications. I mean, just as we have human beings who are moronic, for example. I mean, which are surely—cannot be treated as equal from any point of view. It's also a difficulty.

Student: When the order of the human material and the ideational universe is actually a potential disorder. Isn't it?

LS: Yes, now you can put it this way. There is the universe as a whole that has an element of order and an element of disorder.

Student: How did Plato account for that, Mr. Strauss? Didn't he say something like the Christian says in the [. . .] that there must have been a Fall?

LS: Yes, there is some *analogon* to the Fall in the eighth book of[11] the *Republic*—in the eighth book of the *Republic* when Socrates raises the question, How could this perfect polity go to pieces? and the answer is even more close to the Bible, to say: The woman started it. You know, the wise man's wife begins to complain about what the other women have. [12]So it is not identical with the biblical story, but it has a certain kinship.

Student: [. . .]

LS: Yes, yes. No, that was the view which has often been said, and I believe one can rightly say it is not an insensible view. Both Moses and Plato were thinking and deeply thinking men so it wouldn't be altogether surprising if there would be at least some agreement. But the main point[13]—perhaps the clearest statement of this is the following. In the *Republic* it is said if the best polity were established, evils would cease from the human race. Evils would cease from the human race. There would be no evil—let me please finish—evils would cease completely.

Student: Under what circumstances?

LS: If the philosophers are kings, and the kings philosophers. 473. Great statement. But did Plato believe that evils could ever cease? Answer: no. There is the passage in the *Theaetetus* where this is explicitly said: Evils can never cease here.[ix] Good. And in the *Laws* in the tenth book there is a momentary suggestion that there are two world souls, an ordering and a disordering.[x] You can almost say a god and a devil; that is one way of putting it. I mean, evil belongs to the world.

[ix] *Theaetetus* 176a.
[x] *Laws* 897f.

Evil belongs to it, and therefore there can never be—one can never have what is truly and fully natural right. Your question?

Student: But in Plato you don't have the conflict that you find in, say, Christian theology that Plato's god, even, was limited . . .

LS: Yes, you can put it this way. Yes, yes.

Student: Whereas in the Christian view you have the view that—in some aspects of the Christian view, that God is all good and powerful.

LS: Yes, that is decisive: the omnipotence of the biblical God. And there is no omnipotent God in Plato. Yes, sure. That's the point. And therefore Plato in the *Timaeus* describes the creation of the world—this creator or god, divine artisan, looks at the ideas, the natural order itself, and with a view—which is above him—and with a view to it he makes the universe, what we can say loosely, out of a pre-existing matter. Yes, sure. That's the difference. Yes, that's the last question now.

Student: You said last time that in the classic view the best state would be the possible state too. Now for Plato how much can the best state encompass justice? That is, the most possible state. Does he make any definition?

LS: Oh well, he gives a rather clear answer in the *Laws*. The *Laws* are *the* political book of Plato. I mean, in other words, the book where you read—where you hear what Plato has to say specifically about political arrangements. The *Republic* and the *Statesman* are all theoretical discussions about the nature of political things, not specific proposals, and in the *Laws* you find it. [14]It's not so very different from what Aristotle proposes in the *Politics*: a republic, aristocratic republic, rule of gentlemen, and a class division—I mean, according to property, four classes. [15]It was fundamentally the old Solonic Athenian constitution, politically speaking, which Plato transplanted there, yes, but the principle is the same. I read to you last time this passage about the titles to rule, where the highest title, natural title, wisdom, is qualified by the lower but also natural title of sheer strength. The many unwise must have a say, otherwise wisdom will never be listened to to any degree. This is roughly the schema. But a right of folly, so to speak, is a strange kind of right for such a radical thinker as Plato is. Yes, when we have become accustomed to it we do no longer call it that way, but it amounts to that. That's the difficulty: that in every society, in *every* society, people who are not wise must have a decisive influence even on the understanding of the principles of justice; therefore the principles of justice which are politically acceptable will always be diluted.

Now let me turn now to the master of those who know, as he was called, to Aristotle. Dante called him that way: the master of those who know. Now the beginning can be made very simply [with] the question, What is the true dog: the dog who doesn't grow, doesn't bark, doesn't wag his tail, is unchangeably always the same, or this here dog who barks, who runs around, and all this? And Aristotle says: Of course this here dog; that's the true dog, not that dogness. Dogness is not a dog. Correspondingly, Aristotle answers the question, "What is true virtue"—what is virtue?—differently from Plato. Plato's answer is indeed, "virtue is knowledge," which needs a

long commentary, but this is the answer. And this seems to be as absurd as what Plato says about the true dog, that he shouldn't bark; and how absurd it is you can see, for example, from the presentation which Xenophon gives in his *Memorabilia*: piety is knowledge of what is pious and impious.[xi] Now it is obvious that a very impious man can have a very detailed knowledge of what is pious and impious. So virtue is doing, not mere knowledge; that one can say in the first place. Or did Plato mean that knowledge necessarily issues in acting on knowledge? But then that knowledge must surely be different from what we ordinarily understand by knowledge, something like faith necessarily issuing in works. Plato understood, we can say, when he meant this, [that] virtue means knowledge, i.e., understanding, comprehensive understanding, understanding of the whole. Yet this is not available; only quest for it is possible, and this quest is called philosophy. Man is not capable of virtue in the full sense, only of striving for it. But the other side: the one thing needful is philosophizing, and philosophizing is necessarily preceded and followed by such things as courage, temperance, justice, and so on. Only as byproducts of philosophy are they genuine virtues in contradistinction to the vulgar virtues, the virtues which the nonphilosophers may possess.

Now let us then come—let me develop this point further because we must see that point in Aristotle where we can begin to understand. The highest good is contemplation according to both Plato and Aristotle. Yet Plato calls philosophy striving for *phronesis*, and that is the word for practical wisdom, for prudence. Hence philosophy as Plato understands it is not simply theoretical. Now how does Plato mean this? Philosophy for Plato is the solution to the human problem. Therefore philosophy is animated by *eros*, by desire for happiness. If philosophy is not understood as such, if it is regarded as a discipline among many—as they say, doing philosophy—it is no longer philosophy. Secondly, the objects of philosophy are not indifferent as the objects of the arts are, but they are intrinsically attractive. Let us say philosophy is passionate concern with things which deserve passionate concern. This, I believe, is an abominably modern statement of what Plato meant.

Plato's view has a remarkable similarity to the religious view. Moral virtue by itself is a leaky vessel. It has no subsistence. And the great difference between Plato and Aristotle in this respect is that he, [Aristotle], says, No, moral virtue is genuine—is genuine—and not a leaky vessel. This comes out most clearly in the passage at the end of the fourth book of the *Nicomachean Ethics* where Aristotle speaks of sense of shame, which corresponds very roughly, *very* roughly, to what we would call feeling of sin. There is now a literature in existence, as I have been told, speaking about guilt cultures and shame cultures.[xii] Now guilt and sin are of course very much related, and shame, that's something else, you know. I address this remark only to those who have read this kind of thing. I cannot go into it, not having read these books. So what does Aristotle mean then, [what does he] say then? Sense of shame is a proper thing for young people because they cannot help making mistakes, because of their lack of experience and so. But the well-bred gentleman cannot have a sense of shame because he never does anything wrong. He's perfect, [a] perfect gentleman. So the virtue of the perfect gentleman, i.e., moral virtue, is genuine. That means the nonphilosophers, because the perfect gentleman is by definition not a philosopher, which doesn't mean that the philosophers are not gentlemen . . . the nonphilosophers are capable of genuine virtue, and in moral virtue the cognitive element,

[xi] *Memorabilia* 4.6.
[xii] Ruth Benedict, *The Chrysanthemum and the Sword* (1946).

meaning knowing what you should do, while being indispensable is of course less important than the practical element, actual choice.

Now I cannot now go into the question [of] how Aristotle understands the relation of moral virtue and nature, which is of course of crucial importance. The moral virtues have a natural basis. They are perfections of natural faculties, but perfections achieved, of course, as according to Plato by training and habituation. The point which I have to mention is this. When you read Aristotle's *Ethics*, especially books 2 to 5 where he discusses the various virtues, fundamentally he enumerates them. He does not deduce them. Plato deduces the virtues. You see we have, say, three parts of the soul: reason, spiritedness, and desire. And there is a virtue corresponding to each, and so[16] we know by deduction that there are and can be no more, no less, than these virtues. A deduction. Aristotle enumerates them. What happened later was that the Stoics took over the Platonic doctrine of the four so-called cardinal virtues—wisdom, courage, temperance, and justice—and therefore implying the deduction involved in that. And that was then taken over by the Christian tradition, especially by Thomas Aquinas, where you will find something like a deduction, but not in Aristotle himself.

Aristotle seems to proceed as follows: Well, everyone admits there is a variety of virtues. Let us make a list of them. What do you think of? And then asking, Did I omit anything? Looking around: No, it's complete. That's good enough. That is induction in the original sense: uncontested experience. Wherever you look you find nothing more. Deduction is not necessary.

Now the second difference between Plato and Aristotle which is essential is of course that the city is natural, the thesis developed at some length at the beginning of the *Politics*. What does that mean? In the first place, it is not an artifact, naturally. It is not an artifact. It is by nature. Of course it is made by men. Men have to establish it, but in establishing it they only follow the guidelines of nature. Men—[xiii] —points to the *polis* as that association which is sufficient and adequate for the actualization of men's potentialities. The city is a community neither too large nor too small for the actualization of men's potentialities. A village would be too small; it would be a mere accident if all potentialities of men could be developed there. Well, think: Did you want to have both good training in music and in mathematics, and also in astronomy and other things? It is not likely that you get competent men in each village, so you must have a larger group, a city, a town. But on the other hand, a town can be so big that it becomes unwieldy—you know that all kinds of terrible things can happen because there is no longer possible a supervision of the individual citizens by each other and by the magistrates.

One can say the *polis* is natural because it is commensurate with man's natural power of knowing and of caring; the natural power. For example, what we see through microscope and telescope is not simply our natural power. We are armed with artifacts. Now what we know of, say, President Kennedy or Khrushchev or whoever it may be through newspapers and television: that's also not natural power, and obviously in this case there are special reasons why this doesn't permit of true knowledge of any individual—because this is all staged; that is a special reason—but what we can know by our own observation living with this man in question, and also caring. Men cannot care for the whole human race; there is a limit to that. This is an Aristotelian meaning of the statement that the *polis* is natural in contradistinction to Plato, where

[xiii] The tape was changed at this point.

the *polis* is fundamentally conventional, as is indicated most clearly in the story [of] the so-called noble lie, to which I have referred before. Some arbitrary line is drawn between a part of the human race and the rest. The strongest statement, perhaps, occurs in Plato's dialogue the *Statesman*, where the distinction between Greeks and barbarians and not between Athenians and Thebans or Spartans is compared to the distinction between the number ten thousand and all other numbers. Just as arbitrary as it is to divide all numbers into two classes, one consisting of the number ten thousand and the other of all other numbers, as arbitrary it is to say these are the Greeks and these are the barbarians. The number ten thousand was, I believe, chosen because there were at that time ten thousand famous Greeks who went into the heart of Asia Minor.[17]

Plato in the context, by the way, makes clear what he means by a natural distinction. [A] natural distinction is that distinction of the human race into males and females, not into Greeks and barbarians. Aristotle does of course not mean that there are no relations of justice except those among fellow citizens; there are relations of justice among all, every human being and every other human being because they are human beings. As he puts it in the *Ethics* somewhere—you might read that passage, 1161b1 to 8: One cannot be a friend of a slave as slave, but one can of course be a friend of a slave as human being. And there are relations of justice between every human being and every other human being. Connected with the assertion of the natural character of the *polis* is the assertion of the natural character of private property in the criticism of Plato in the second book of the *Politics*. Plato had said only the body is by nature private, one's own, and Aristotle makes clear that the extension beyond the body, of houses, fields, and what have you, is natural to man and man could not live a life which is not altogether unbearable if he did not have private property. Private property, to make this quite clear, does not mean of course the same [as] what is now called free enterprise. Free enterprise means the freedom of infinite acquisition. Aristotle does not recognize that right. What Aristotle has in mind is [that] the property, say, the family property—the most simple case, the estate, the landed estate which one has inherited from one's fathers and grandfathers—must not be interfered with. But that the *polis* is of course perfectly able[18]—and it is necessary for it—to establish limits beyond which no one may own property, was no question for him. This is one of the greatest changes in the history of natural right: that from a certain moment on the natural right of property came to mean the natural right of acquisition. And this is, of course—well, you know the Federalist, number 10. I forgot now the exact formulation. How does Madison say? The protection of the unequal powers of acquiring property is the function of the state.[xiv] The key individual in this development is Locke. I will take this up later.

From all this it follows that the natural right as Aristotle understands it can be identical with what is ordinarily understood by right or just, ordinarily meaning by nonphilosophers. And so

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[xiv] "Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government." *Federalist* 10.

Aristotle can speak—Aristotle uses this example of prohibition against stealing, murder, adultery, and so on as a matter of course. But we must now turn to Aristotle's explicit teaching on natural right and this we find chiefly in two Aristotelian writings. The one is the *Rhetoric* and the other is the *Nicomachean Ethics*. (Now I will write this here.) A word about the name: Nicomachus was the name of Aristotle's son, and why the book is called after his son I don't know and I believe no one knows, but surely not because Nicomachus wrote it. He may have copied it, for all I know. But this is *the Ethics*. There are two other *Ethics* transmitted as Aristotelian; it is not necessary to discuss that now. *The* ethics is called the *Nicomachean Ethics*.

So in the *Rhetoric* first. Now what do we learn from the *Rhetoric*? The *Rhetoric* is of course a work devoted to the art of persuasion, rhetoric. [LS writes on blackboard] [Laughter] No, no, so-called factual knowledge should never be expected.[xv] That can always easily be said. And if I don't know it, one can easily look it up in any of the many dictionaries. That's easy. The main thing are the ideas, if I may say so, not the words. Now the *Rhetoric* has, contains Aristotle's doctrine of how to speak well before law courts, in political assemblies, and also maybe for the purpose of showing off. That was also a kind of rhetoric, [epideictic] rhetoric, where a man, you know, just for—where no practical purpose was involved and only just showing one's cleverness. Now Aristotle makes here a distinction in the first place—that is the first remark about that—a distinction between the written law of the *polis* and the unwritten or universal law, meaning not only for the *polis* but for man as man. This is developed most specifically at the beginning of the thirteenth chapter of the first book. I will read it to you.

"I call [*nomos*—LS] law; the one is [literally translated, private—LS] particular; the other universal. Particular are those established by each people in reference to themselves, which again are divided into written and unwritten. By common or general I mean those which are according to nature. [The common law, law common to all men, is the natural law—LS] For there is, as all men divine, a right and wrong common according to nature, even if there is no community among the men nor any contract."[xvi]

In order to have a private, a particular law, law of the *polis*, there must be some agreement. They simply have to take a vote. They have to take a vote: this will be the law. There is, however, something right by nature, and hence a natural law which does not presuppose any contract whatever. And then he gives examples from Sophocles, Empedocles, and Alcidamas. These examples are merely meant to show that there is an agreement as to the fact of natural right. They are not examples of what Aristotle regards as natural right, as you can easily see from the fact that Alcidamas thought that by nature all men are free and no one a slave, which flatly contradicts Aristotle's teaching, as we will see. Good.

Now—and then in the sequel, in the same chapter, he makes a distinction roughly as follows. There are two kinds of right, namely, written and unwritten; and of the unwritten right there are two kinds again. First, the noble things. Now the noble things mean here the things which are beyond the call of duty. May I make this remark? What we call moral today, now and for many centuries, is in Greek, in the classic Greek, the just and the noble things. Just things are not the noble things but they are of course akin; but strictly understood they are different. The just

[xv] The transcriber notes that Strauss made this remark in response to the students' laughter.
[xvi] Aristotle, *Rhetoric* 1373b2. Presumably Strauss's translation.

corresponds roughly to what we regard as duty and the noble things are things which are praiseworthy, going beyond that. What would be an example? Pay[ing] one's debts is just, but no one is praised for paying one's debts unless in very special circumstances, when it requires an immense effort to pay them. To be in jail because you have committed a crime is just, but no one would say it is noble to be in jail. Yes? This one must always keep in mind if one wants to understand these things. So the unwritten is in the first place the noble things, and secondly the equitable, the equitable. In this context Aristotle does not speak of natural law, nor even of a common law. And in a later passage, in chapter 14, again in the first book of the *Rhetoric*, unwritten laws are characterized by the fact that they are not compulsory; they are not enforceable by their very nature. Now this obviously cannot refer to equity because equitable decisions can be enforced, but it refers to the noble things. Now take the simplest case: gratitude. To be grateful is noble, but in the moment you become obliged to be grateful, if you are not nice, if you do not pay visits to your benefactor at least once in a quarter of the year [and] then you will go to jail, then obviously[19] it becomes a legal obligation and ceases [20]to be noble and praiseworthy simply.[21]

The last important passage occurs in the fifteenth chapter of the first book of the *Rhetoric*, and let us see what he says.

"First we have to speak about laws: how to use them when exhorting or dissuading, accusing or defending. [This is, of course, the rhetorical question. He's teaching orators, speakers—LS] For it is evident that, if the written law is counter to our case, we must have recourse to the universal[xvii] law and equity, as more in accordance with justice; and we must argue that, when the juror[xviii] takes an oath to decide to the best of his judgement he means that he will not abide rigorously by the written laws . . . that equity is ever constant and never changes, even as the universal[xix] law; and further, that justice is true[xx] and expedient but not that which only appears just—"[xxi]

And so on. And also of course the following consequence: that if the written law speaks for us and the unwritten law against us, then we will say, you know, that you ought to go by the written law because the unwritten law is much too vague and unspecific. So what becomes clear is that this is really a rhetorical topic. Natural law is, as it were, a common assumption granted by everyone in the law court and not more in this particular connection. The unchangeable natural law has this character. This much about the *Rhetoric*. And now you wanted to say something.

Student: . . . the city is not natural but just by agreement . . . that the *polis* is natural because it is coextensive with the human powers, it would seem—

LS: It is coextensive with what? Yes. Yes, but that doesn't mean, of course, that the laws of the *polis*, at least, that all laws of the *polis*—

[xvii] In original: "general"
[xviii] In original: "dicast"
[xix] In original: "general"
[xx] In original: "real"
[xxi] *Rhetoric* 1375a3-6. Strauss reads, with some modifications, from the Loeb edition, *The "Art" of Rhetoric*, trans. John Henry Freese (Cambridge, MA: Harvard University Press, 1926).

Same Student: But the particular law—but the fact that the political community is natural—

LS: Yes. Yes, but there are all kinds of questions. For example, the *polis* is natural, but the *polis* always has a political form, a regime: it is democratic, oligarchic, monarchic or what have you. Is this difference of regimes irrelevant regarding the naturalness of the city? May there not be regimes which make the natural city a sick city, and others which make it healthy? And the laws depend very much on that. We come to that. I merely wanted to give you the absolutely necessary evidence in the Aristotelian texts. Yes?

Student: In what way, then, is Aristotle's idea of natural law by nature, if it is not a pattern writ up in the sky, as Plato, but merely a defenseless[xxii] type of idea.

LS: My answer is this. On the basis of the *Rhetoric*, you cannot give any answer, because he merely makes the assertion that there is such a thing, and the examples which he gives are all of them not Aristotelian examples. What I wanted to show is only the occurrence of the term natural law in Aristotle in the *Rhetoric*. That is so important, because in Plato, as I pointed out at the beginning, the term natural law never occurs, with these two exceptions I mentioned: One in the *Timaeus*, when natural law is the law of fluids in the body[xxiii]—which has nothing to do with our issue; and [another when] Callicles speaks of a law of nature, and Callicles means by it the law of the stronger.[xxiv] That's also not the thing which we seek. [22]Aristotle does speak of a natural law in the *Rhetoric*. But the *Rhetoric*, one must never forget, is a book, a manual, teaching men to be good speakers; and then of course he has to know the items, the *topoi*, the topics which are used as a matter of course in law courts, in political assemblies and so on, and one of them is the unwritten law in a variety of meanings. In one it means equity; in another it means also something—a law which all men recognize, which is by nature. It doesn't contain an assertion that this *endoxon*, this generally accepted view, is strictly speaking true.

In order to establish what Aristotle thought about natural law himself, we must turn to his *Ethics* above all. Now I must say again, Aristotle does not speak—I must say as I said in the case of Plato—Aristotle does not speak of natural law but of natural right, and the reason, one can say, is this: Aristotle's *Ethics* is above all a doctrine of virtues. Now the virtues—there are roughly eleven of them—they are of a great variety. There is a principle of order; one principle of order [is] particularly important. One can say virtue in the Aristotelian sense has two peaks, two virtues which embrace all other virtues. One is called magnanimity, and one is called justice. Now magnanimity means what one can [23][call] noble pride. It means demanding great honors for oneself while deserving them. If someone demands great honors for himself while not deserving them, he is an absurd boaster. If someone wants for himself no great honors and [is] not deserving [of] them, then he is a sensible fellow. But if he demands great honors for himself deserving them, then he is magnanimous. Now magnanimity is the comprehensive virtue from the point of view of the perfection of the individual in himself. A man who has all virtues, who possesses all virtues to the highest possible degree, of course must be conscious of the fact, otherwise he would be a fool. I mean, I try to restate in a somewhat slangy manner what Aristotle

[xxii] In the transcript: "defenseless (?)"
[xxiii] *Timaeus* 81a.
[xxiv] *Gorgias* 483d.

in his dignified language says. So he must be conscious of his worth; and if he is conscious of his worth he also wants it to be recognized, because it is good for the others too if they recognize it. It's good for the *polis* if they recognize it. But it is primarily the perfection of the individual.

Justice is the all-comprehensive virtue from the point of view of the *polis*. Justice, that is what Aristotle calls general virtue, general justice, justice understood as comprising all virtues. Now the proof which Aristotle gives that there is such a general virtue is that he looks at the most common view of law, of justice: the just is the legal. The just is what the law prescribes. Now the law prescribes not merely actions of justice in the narrow sense—not to steal, not to forge checks—but also not to run away in the army, from the army. Courage. It also forbids certain forms of intemperance and so on and so on. So these are the two peaks of Aristotle's *Ethics*, and the virtues which they comprise somehow overlap. Now if you consider the fact that some of the virtues are—for example, urbanity, you know, nice graceful conduct in society, gracefulness, now this is obviously not something which the law can prescribe ("Be witty in society"), and there is a certain impropriety in understanding the virtues as Aristotle understands them as commanded by law. Some of them, yes. Also perhaps the most important ones, but not all. This is a simple explanation of the fact that Aristotle's doctrine of the virtues is not explicitly connected with a doctrine of natural law.

But of natural right Aristotle has indeed to say quite a few things, but nevertheless apparently very little. Apparently there is only a single page of the *Ethics* which deals with natural right, and this is in the fifth book, 1134b18 to 1135a5, and to this passage I will now turn. Given the fact that time moves while we move, I will not be able to finish the discussion of the passage; but on the other hand, we have time at least to begin it. Now it begins as follows: "Of political right some is natural and the other is legal." Legal means here of course established by positive law, convention. Political right: let us try to interpret that. Political right obtains among those among whom there is by nature law—political right in distinction to other right, and these are among free and equal men, among fellow citizens. Political right is the right which obtains among fellow citizens where no one belongs to the other, as in different ways slaves belong to the master, children belong to their parents, and a wife belongs to her husband. Take a very simple case: if a father takes away money of one of his children he cannot be said to commit theft, robbery, or whatever it may be. And the case of a slave and husband is slightly different, but fundamentally it's the same. Society of free and equals where no one can as such give commands to the others, except if specially authorized by law. The father can give commands to his children without special authorization; [so] the masters to their slaves, and in a way the husband to the wife too, according to the older view. Good. But a citizen can't give commands to any fellow citizen unless he is elected magistrate—by virtue of that but not as such. This sphere of the adult male fellow citizens, to make it quite clear, is the sphere of the greatest density of right as right. With a complete stranger, say, if you take someone, I don't say in mainland China, that is too complicated, but in Formosa, whom you never have heard of, you have no relation of right[xxv] whatever. But if you meet him somewhere in the subway or in any other place, there is a certain relation of right. I mean, you cannot hurt him in any way—that goes without saying—not insult him and so. That is clear. But there is very little—you have almost nothing in common with him. The relation of right is very thin. With your fellow citizens, especially if you take it in the whole sense, with [the] *polis*, these twenty thousand men at the most who live together, they have the

[xxv] In the transcript: "relation (?) of right"

maximum in common, as independently they have much more in common, you can say, with their wives and children. But these are not relations of right, properly understood. It becomes only when something goes very wrong, when he beats his wife and children so much that he has to be dragged before a law court, but in most other relations the question of right does not arise.

Now this political right is then here under discussion. And to repeat, when Aristotle says natural right is a subdivision of political right, he doesn't mean that there is no natural right among people who are not fellow citizens, but somehow he is more interested in political right because political right, as I say, is the sphere of the greatest density of right as right. He said shortly before in the *Ethics*, "We seek both what is absolutely or unqualifiedly right and the political right."[xxvi] This means, according to Thomas Aquinas, the absolutely or unqualifiedly right is identical with the political right. I do not know whether that is the last word about it, but that is surely a defensible interpretation. Right pure and simple, right without qualification, is a right obtaining among fellow citizens. Now in a sense, of course all right is political, as Aristotle makes clear at the beginning of the *Politics*, because ultimately every decision—what has to be done and must be done—every authoritative decision must be made by some duly-established authority. Good.

Now let us proceed and take the next passage.

"Natural right is that right which has everywhere the same power, and not through its pleasing or not. Legal is that right regarding which it makes no difference to begin with whether this way or that way, but when they have settled it, it does make a difference. For example, that the ransom for a prisoner should be one *mina* [a coin—LS], or to sacrifice a goat but not two sheep. Furthermore, what they legislate regarding individual things, like to bring sacrifice to Brasidas, and what has the character of a decree."[xxvii]

Now here Aristotle explains more fully what he means in a sense by natural right: natural is that right which has everywhere the same power. Aristotle says "everywhere" in all these cases and not "always," although he means of course also "always," for this reason, that is,[24] the only explanation of which I can think: what obtains everywhere is in principle knowable by any man by looking with his own eyes. Especially today, but to some extent also in former times you can travel—you can go to Persia; you can go to Syria; you can go to Northern Africa, to Thrace, and see all of that, whereas what was in the past you cannot know in this direct way. You have to depend on reports. So natural right: that which has everywhere the same power, and not through its pleasing or not. Now "pleasing" is an inadequate translation. When a law is passed, the formula is "it pleased the people," "it pleased the *demos*." It pleased. Now positive right is right only by the fact that it has pleased the people of this or that city. Legal is that right regarding which it makes no difference to begin with whether [it is] this way or that way. For example, simplest case: right driving, left driving. There's nothing unjust with driving right or with driving left—as the British show, very righteous people—but once it is established it does make a difference. Aristotle's example here: the ransom for a prisoner should be one mina. Obviously positive.

[xxvi] *Nicomachean Ethics*, 5.6.4, 1134a25-27. The translation is apparently by W. D. Ross. *Nicomachean Ethics*, trans. W. D. Ross (Oxford: Oxford University Press, 1952).
[xxvii] *Nicomachean Ethics*, 5.7.1-2, 1134b18-1135a5.

Now let us see, this example. What can we learn from this example? Because after all it is not[25] sufficient to tell us that there is a natural right which obtains everywhere, but we want to have at least some specimens of it. Now to ransom prisoners for one mina, positive. To ransom prisoners: Is this an example of natural right? Perhaps we have to speak more generally. To help one's fellow citizens from misfortunes into which they fell while performing a civic duty, that would seem to be intrinsically just. The other example: two goats or one sheep, or whatever the example. To worship the gods by sacrifices, or if this is too detailed, to worship the gods, this is natural right. And I'm sure this is what Aristotle means. Well, the next passage requires a somewhat lengthier discussion, and since there is someone who has a question I can anyway make a stop here.

Student: [Question as to the correctness of McKeon's translation][xxviii]

LS: Yes. If I'm not utterly mistaken—I mean for the sake of sheer exactness, the translation is not by Mr. McKeon but by Mr. Jowett. Ross—I'm sorry, Ross—very good blunder. Good. And Mr. McKeon edited. So you must not blame my colleague.[xxix] Where are we now? Yes, in the fifth book; let me see, 1134. Yes. Well, the chapter divisions differ from edition—in this, seven—yes, the best thing is to count from the marginal numbers, 1134b18 following. Now where is your difficulty?

Student: Well, the difficulty is that where you said right it says here justice. That's political justice.

LS: Yes. Yes, sure. I elaborated this translation advisedly because I wished to keep away everything which is not necessary, because this passage is difficult enough. Now the translator is of course a very intelligent man. He tries to make it more intelligible, i.e., he presents it as much as possible according to present day usage. But what is gained in immediate intelligibility is lost in true understanding. You know? So there is, of course, nothing of a rule of justice. Something right is much more—is the literal translation, and by the way, never forget this thing, you shouldn't be set back by the word justice. I stated this before, this simple wisdom from the first lesson in Latin, that what in English is called right is in Latin *justum*, the just. I believe it is easier to say of political right [that] part is natural, part is legal, than of the politically just. But here I may be wrong, and if you think if I would say "justice" better than "right," I'm willing to make that change. I thought only right was a bit more idiomatic in this connection than just.

Student: [To the effect of whether different Greek words are used for the English right and justice][xxx]

LS: No, no, no, no. Same word all the time, and that I brought out—tried to bring out in my translation.

[xxviii] As noted by the transcriber.
[xxix] Richard McKeon (1900-1985) was professor of Greek and philosophy at the University of Chicago from 1934 until his retirement in 1974.
[xxx] As noted by the transcriber.

Student: [Pursuing further the problem of translating from the Greek][xxxi]

LS: Yes, that is not so simple. The ordinary word for the virtue of justice is *dikaiosynē*. Now *dikē* is of course the original, the root. Yes? Right, and the goddess of right, surely you can say. But it also can take on this narrower meaning—that's the difficulty—namely, of punishment. *Dikēn didonai*, to give right, literally translated means to undergo punishment. And *dikaion* is the adjective which means, literally translated into Latin, *justum*. *Justum*: the just one, the just thing. We cannot use the adjectives as easily as the Greeks do. Therefore I said right instead of the just. Yes, Mr. Butterworth?

Mr. Butterworth: Speaking about this question about language, there's something you mentioned earlier about the difference between natural right and natural law . . .

LS: No. That is, I don't know. The term natural law, *nomos* as *physis*, is of course a term occurring in Greek writers. But it occurs in Plato and Aristotle with very great rarity, and the term *physei dikaion*—in English, "natural right," is more common and much more fully developed. The Greek equivalent of the term natural law becomes very powerful and central after Aristotle in the Stoic teaching. I will speak of that later.

Mr. Butterworth: But in the sense of *nomos* as being the law there?

LS: Yes, sure, *nomos* as *physis*. Sure. Otherwise I wouldn't translate it that way. Sure. So, I mean, one can say, and as has been said so often and as I believe is said in most textbooks, that the origin of the natural law tradition has to be sought in Stoicism. In a literal sense it is correct: natural law but not natural right. That is much older.

Mr. Butterworth: But does this opposition create some tension . . .

LS: Yes, it surely compels us to raise the question: Why suddenly this emphasis on natural law in the Stoic philosophy, whereas no such emphasis in Plato and Aristotle? Surely that must be raised. The usual answer given is: That's all Alexander the Great—which is, you know, [that] the *polis* ceased to be the form of organization, and that empire of Alexander which foreshadowed the Roman Empire, that is a universal society comprising all men and no longer merely the small segment which was assembled in a *polis*, and therefore you needed a universal law. This has no basis, I believe. Yes?

Student: [To the effect of whether or not natural right for Aristotle includes worshipping the gods as implied in *Ethics* 5, 1134b22, the passage which was read.][xxxii]

LS: Yes, I believe that is the most natural understanding here, because to sacrifice a goat and not two sheep, or vice versa—this is obviously positive right. But what is here which could conceivably be not positive? What is here of a more general nature? You can only say: sacrifice to the gods. If this is too specific, then you say: to worship the gods. And this is not entirely far fetched, because in a discussion which deals with this theme, although not under this name,

[xxxi] As noted by the transcriber.
[xxxii] As noted by the transcriber.

namely, Xenophon's *Memorabilia*, book 4, chapter 4, worshiping the gods is mentioned in the first place and there is also later evidence for that. So that is, I think, a defensible assertion. I don't say that it can be proved from this passage here, but it is the most natural. At any rate, one thing you must admit: When Aristotle devotes a single page explicitly to the question of natural right in these terms, we must insist on getting some light on what specific provisions of natural right are. We have two here. One is very specific: that about helping one's fellow citizens, and especially if they have incurred misfortune while engaged in service for the city. I think no one can seriously doubt that this is not more than fair. And [second], worshiping the gods too. And these are the only clear examples which come [out]. The passage is one of the most difficult pages, surely, in the *Ethics*, but not inferior to other famous difficult passages in the other works. Next time I will complete that and try to reach some conclusion of this[26] [part].

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[1] Deleted "which."
[2] Deleted "well."
[3] Deleted "no, no, the positivists—that is too simple."
[4] Deleted "a more—."
[5] Deleted "is."
[6] Deleted "that if."
[7] Deleted "You see—yes, these are all—I mean, for example, such a specific law that—I mean."
[8] Deleted "all."
[9] Deleted "the-- I mean."
[10] Deleted "I mean, these, how shall one say"
[11] Deleted "the—yes, but—in the eighth book of."
[12] Deleted "and good."
[13] Deleted "what Plato"
[14] Deleted "sure, it is a kind."
[15] Deleted "The old."
[16] Deleted "we know that there are—"
[17] Deleted "Aristotle, of course, does not mean—."
[18] Deleted "to."
[19] Deleted "it ceases to be"
[20] Deleted "to have."
[21] Deleted "(Let me finish—I'll give you the word as soon as possible. I will only finish that.)"
[22] Deleted "So—and."
[23] Deleted "say"
[24] Deleted "I think."
[25] Deleted "sufficient for us"
[26] Deleted "first pace."

Session 9: November 5, 1962

Leo Strauss: [In progress] —contradistinction to law, as I did hitherto, and then right or rights as used in contradistinction to duties. The latter will become very important when we turn to modern natural right, but for the time being let me say only this. The distinction between rights and duties which is so obvious to us was not always so obvious, and I will illustrate it by a statement of Aristotle which is to this effect: what the law does not command it forbids—in contrast to, say, Hobbes, [for whom] what the law does not command it permits. Now the latter we easily understand, but the former is difficult. How can this be? For example, the law doesn't command, does it, that we should breathe or that we shall take food and so on, and hence we are forbidden to breathe. Now this is not true, of course, because the law forbids, for example, committing suicide. The law also commands that one becomes a soldier under certain conditions, and other public duties which one cannot possibly fulfill if one is not alive. So in other words, the right to breathe is here tacitly understood as derivative from a duty, and one can say that this is the way in which ancient law understood men. When Socrates says in his *Apology*, *Apology of Socrates* by Plato, "I am just in making my speech of defense"—*justus sum* in Latin—what does that mean here? Does it mean Socrates is entitled to make a speech of defense or he is under an obligation to make a defense? I think it is prudent to say we cannot say, but if one can make a guess, I would say the primary meaning is he is obliged to do so. The distinction of right and duty, the hard and fast distinction as we know it, is a derivative one which arises in certain cases with a certain necessity but which is not primary. Let us never forget that this word which in English it is hard to say;[1] you will see from my examples why it is so hard to bring it out in English, but it is only implied in English in this clarity—the word which I translate "right" is the Latin *jus* and corresponding Greek words.

Now what does that mean? For example, *jus helvetiorum*; that is the law of the Helvetians, the *law* of the Helvetians, or of any other tribe or nation. Then there can be a *jus matrimoni*, a right of marriage. What does it mean? It's a law regulating marriage. There can be *jus regis*, a law regarding the king, the law. Now here of course we see—there is here a distinction which must come up sooner or later. The law tells the king or, for that matter, the president what he must do. It also tells him certain things which he may do. Now what he must do are his duties. What he may do, we can say, are his rights. But that this distinction should become central and as important as it seems for us, that is by no means certain and surely it is a later development. We cannot presuppose this here at the beginning. Here we are concerned only with the distinction between right and law in the sense of what is just, what is just, and whether this what is just is understood as somehow based on a law. It has nothing to do with the distinction between duties and rights. Did I make this sufficiently clear? One of you had some difficulties last time and came to me at the end of the class. I do not know whether I succeeded in making it clear. Mr. Butterworth?

Mr. Butterworth: [. . .]

LS: Yes,[2] when these things were discussed in the late Middle Ages or early modern times, then of course it was simply said [that] *jus* has a variety of meanings, and one meaning is the same as *lex*; and the other meaning is what they then came to call a *facultas* for something, where the simplest example is of course property or any dominion. Say, the father has dominion over his children; the property owner has—yes, and all these kind[s] of things were called dominion in the widest sense. This was the right. In German—I do not know whether they do it also in French and in Italian—they make a distinction between right in the subjective sense and right in the objective sense. Now right in the objective sense is a body of law, and right in the subjective sense is the right which a man or a body of men has or have. The right which has you, if I may say so, that is right in the objective sense, or law. The right which you have [is] subjective right. Now this distinction was developed surely already—for example, the Romans speak of a [. . .][i], of a right to use and to misuse property. It's of course a subjective right, but the question is whether this is made explicit, this distinction, or not. And it was made explicit to some extent in the later Middle Ages, early modern times, but still not so clearly that Hobbes did not have some right to say *jus* and *lex*, right and law, are radically different, and they are generally confused. And he made this clear-cut distinction that right means simply the subjective right, the right a man has, and *lex* means the body of law or the obligations.

So this is a very long story. But when I speak in this Greek context of right in contradistinction to law, I do not mean at all this modern, this later distinction. This I only had to make clear. The key point is only that[3] when you speak of right or just there is not evidently a reference to law, whereas when you speak of law, of course the reference is there. We will later on see what it means. For the time being we must limit ourselves to saying that neither in Plato nor in Aristotle is there a teaching of natural law, whereas there is clearly a teaching of natural right; and we must later on try to understand that. Yes?

Student: Would you say then that the usage of law and right in Greek times—the Greek words for law and right are radically opposed, whereas—

LS: Not opposed.

Same Student: [. . .]

LS: You can say that. That makes sense. In other words, perhaps more precisely, the natural law teaching stems from the Stoics and not from Plato and Aristotle. Yes? Good. But needless to say, there are elements in Plato and Aristotle; you saw in Aristotle's *Rhetoric*, for example, the reference to it, but it is not developed, especially not in the *Ethics* where he clearly presents his own teaching.

The other point which I wanted to make with a view to an earlier discussion is this. I said the issue is primarily: Is there something by nature right, or is all right conventional? Now the view that all right is conventional I called conventionalism, and the reason given was roughly this, still as today. Look at the variety of institutions and of notions of right in different peoples and at different times. This infinite variety seems to show that there is nothing natural in right, for if there were anything by nature just it would be universally valid, universally recognized.

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[i] The transcript has a blank space here.

But this argument is not very—not powerful, as is admitted by the very conventionalists. When you read the argument in Plato's *Gorgias*, for example, or in the second book of the *Republic*, you see that the same people who say all right is conventional say also right has a core of meaning which is unchanged in time or in place. I mean, to quote a much later writer but [one] who only restates the view of the older thinkers, namely, Rousseau: "Is there some country on earth where it is a crime to keep faith, to be gentle, beneficent, generous, where the good man is despicable and the perfidious one is honored?"[ii] It makes some sense, and perhaps there must be some trivial qualification, but essentially it is correct.

So there is a core of the meaning of justice which is really generally recognized. Rank injustice is nowhere publicly defensible. It is defensible when it is disguised on the basis of lies or myths regarding facts, but in itself it is not publicly defensible; and to that extent the anti-conventional view is correct, but also the intelligent conventionalists admit that. What, then, is the issue? The issue concerns exclusively the status of that right which is universally recognized. Is that right merely the conditions of living together, of political society as a closed, particular society, or does it constitute a right independent of political society, a right between man and man? Because if it is a right binding only the members of a society, then one can rightly say it is exactly like that justice which Al Capone[iii] admitted. I mean, he surely preferred the more able of his companions to the less able, and there were certain truths which they observed in sharing their loot. In other words, there are certain crude rules of division, of distribution and of exchange, which are admitted in every society whether it is a gang of robbers or a political society. But this gang of robbers obviously is very unjust; they do not act justly toward the outsiders.

Now one could say: Is not a political society also such a society which is relatively decent among its members but doesn't regard itself as bound toward any other human beings? If this were so, then one could rightly say justice owes its validity only to a preceding contract or agreement. Then justice is radically conventional, although the meaning of justice is not conventional. That has fundamentally one and the same meaning everywhere, but is its validity not ultimately conventional? That is the other point—that is the decisive point. Differently stated, the conventionalists deny and their opponents assert that justice is choiceworthy for its own sake, whereas the conventionalists say: No, it is only a necessary thing, necessary evil or necessary good; that does not make any great difference. In other words, the case for justice is simply a case of calculation: I figure out that it is on the whole safer to be just. Nothing drives us toward justice spontaneously. There is no natural inclination toward justice. It is based only on calculation. This is fundamentally the issue of natural right as it was discussed in classical antiquity.[4]

I will now return to the passage in Aristotle's *Ethics* where he speaks explicitly about natural right; and I have interpreted the beginning, that natural right is introduced here as a part of political right. But that doesn't mean that there is no natural right outside of political right; it means only that natural right has its greatest density or fullness among fellow citizens. Natural right is that right which has everywhere the same power, and not through being accepted or not.

[ii] Jean-Jacques Rousseau, *Emile: or, On Education*, trans. Allan Bloom (New York: Basic Books, 1979), 289.

[iii] A well-known Chicago gangster from the 1920s.

And we have seen some examples of natural right as Aristotle understands it. For example, ransom prisoners: that would mean, as a formula of natural right, to help one's fellow citizens, especially from misfortunes into which they fell while performing a civic duty. And to worship the gods by sacrifices, or more generally, to worship the gods, is also valid by natural right because we see it everywhere.

He continues as follows, and I read now again—that is, [1134]b24, following.

"Some hold that all right is such like [i.e., legal—LS] since what is by nature is unchangeable and has everywhere the same power, as fire, a natural agent, burns both here and among the Persians, but the just things they see being changed. This is not so, but in a manner, it is so. Indeed, with the gods it is perhaps in no way so. With us, however, there is something right also by nature. But all right is changeable. Nevertheless, some of it is by nature and the other not by nature. Which of the things susceptible of being different is natural and which is not, but legal and by agreement, although both are changeable equally, is manifest."[iv]

One of the most immanifest sentences one could imagine. Now let us see what he means by that. Now how is it manifest? If both natural right and legal right are changeable, nevertheless part of it is natural and part of it is legal. Now let us first see. All natural right is changeable. What does this mean? For example, if we stick to the example in my opinion implied, sometimes it is not just to bring sacrifices. I mean, not only that they are not obliged to do [that] but that it might[5] be just blatantly unjust. Well, we can easily see when. There could be emergency situations, during a siege or so; and there could also be situations in which it is not just to ransom prisoners. But Aristotle indicates somewhere in the second book, there are still things like adultery, theft, homicide, which are always bad, so the question never arises as it arises regarding eating and drinking and other morally neutral things: When, where, how much? You cannot say how much is moral when you cannot deliberate as to how much you would steal, and when and where: they are always bad. And here Aristotle seems to deny that there are any things which are always bad.

Now when, then, to repeat, is what is by nature just—say, sacrificing to the gods—properly changed so that the change is no less naturally just than the unchanged? In spite of the fact that both the natural and the legal just are equally changeable, it is manifest which changeable just or right is natural and which is not natural. I think we only have to look back; then we understand this sentence, namely, the natural is that which is everywhere in force regardless of its changeability or not, and the legal is that which changes from people to people, from city to city. We must come to this assertion—we must come back to that later. I continue now.

"The same distinction [namely, between natural and legal—LS] will hold of the other things, for by nature the right hand is stronger, and yet all men can become ambidexterous."[v] Now let us see what light this comparison throws on the question of natural right. Natural right is compared here with the fact that by nature the right hand is stronger, and yet this is changeable: when a man becomes ambidexterous, both hands are equally strong. In other words, the natural right can be changed by human art—that would seem to be the parallel—and can thus be improved. I think Aristotle means that ambidexterity is preferable to non-ambidexterity. But in this case, of course

[iv] *Nicomachean Ethics*, 5.7.2-4, 1134b25-b33.
[v] *Nicomachean Ethics*, 5.7.4, 1134b33-35.

the right thus changed or improved is no longer quite natural, just as ambidexterity is not quite natural but is brought about by art. Now this seems to refer to the change which is effected by the addition of legal right to natural right; and such additions take place all the time. Take a very general proposition: Sacrificing to the gods is of no great help if you don't know to which god, and at what times and what places. So this is a change of natural law, the addition to it, but of course presupposes it and does not abolish it.

If we think this through, we might reach this conclusion: that the natural right is a minimum recognized everywhere but the law everywhere adds to it. But is this what Aristotle means? Does he not mean that after the change of the natural right, of what is called narrowly natural right, right is still natural. In other words—otherwise there wouldn't be any change; you could not call it, strictly speaking, a change of natural right if something is added to it, if it is made more specific by legal right. This seems to be a difficulty which we will take up later.

Now I go first on and finish this passage: "Right according to convention and to expediency is similar to measures [measures and weights—LS] for corn and wine measures are not equal everywhere but where they buy those things, i.e. in the wholesale market, they are larger, and where they sell them, in retail, they are smaller." The nature of the case requires measures everywhere, but this is wholly ineffective if the specific measures are not established and they are established by convention; and they naturally differ from place to place, but, by the way, not entirely arbitrarily, as Aristotle indicates, because some good reason, expediency, determines which measures you adopt for which problem. "Similarly, also that right which is not natural but human, i.e., of human origin, is not the same everywhere, since not even the regimes are the same everywhere."[vi] Legal right necessarily differs because all laws depend on the regimes, and the regimes differ in many ways. I mean, there is not only one kind of democracy; there are four, five, or maybe more kinds. This implies that the natural right does not depend on the regimes but obtains everywhere. It seems to confirm the view that it stipulates the minimum requirement of social life. So all legal right depends on the regime: there is a democratic right; there is an oligarchic right; there is an aristocratic right, and so on. And Aristotle develops this at great length in his *Politics*.

But here we have to raise this question: Are all regimes equal in regard to justice? That they are equal in regard to goodness is another matter, perhaps. Each regime has its notion of right, but these notions, like the democratic right, the oligarchic right and so on are distinguished by Aristotle from what is emphatically right, supremely right. For example, the democratic right says according to this crude distinction: All men should be treated as equal in every respect—or all citizens, really. The oligarchs say: No, there should be different treatment of different citizens with a view to their wealth; the wealthier people should have greater rights than the poor ones. And Aristotle says both are wrong, because the only reasonable criterion of distinction among citizens is virtue or merit and not wealth or any other consideration of this kind. Preference is to be given to men of excellence and ultimately to the man of supreme excellence and wisdom. This is right. In a word, the best regime is—the most divine regime, as Aristotle put it—is kingship of a certain kind, of the man who deserves to be king. This is by nature the best regime, and hence everywhere where a true king is available it is the just regime. But when he is

[vi] *Nicomachean Ethics*, 5.7.5, 1134b35-1135a3.

available of course it is just to obey him. This is what Aristotle understands by what is simply right, which is not identical with the political right. The political right obtains among free and equal fellow citizens, but if there is a case of such a superiority, the political right does not obtain. And this simple right is most natural because no artificial things of any kind are required. Wherever you have a group, a body of men ruling, you need artificial requirements, obviously. I mean, who should do what? Who should do what? And even the majority vote is of course not simply a natural right institution, although some people have said it is. This most divine regime is above the law. This true king is above the political right which obtains among equals because the others are his subjects, as it were his children, and therefore they do not have that independence of one another which is essential for political right, right obtaining among fellow citizens. Aristotle goes so far as to say that this man is—he is the whole. He is the whole, and the common good is not something outside of him to which he has to be subjected.

In these extreme statements, which are of very little or no practical importance, of course, but which are very important for the theoretical orientation—in these points, Aristotle agrees with Plato. So in other words, this puts a big question mark behind the political right and also the natural right implied. But—and here we come back to what we can call reality—in contradistinction to Plato, Aristotle admits also a natural right which is, as we may say, a minimum and not that maximum. This corresponds to the fact that he admits, in contradistinction to Plato, that there is a self-subsistent moral virtue, which also comes closer to political reality. Aristotle's explicit teaching regarding natural right merely serves the purpose to show that there is natural right despite the fact that it is changeable. It is not meant to make clear the content of natural right. The explicit discussion of natural right follows on the preceding discussion of that content. And now what is that content?

First, justice means in the first place lawabidingness. And justice as lawabidingness is, in a way, the whole virtue of man insofar as it is directed toward another man, insofar as it is social, for the law commands the actions of all or most virtues. For example, courage, not to run away in battle; temperance, not to commit adultery; gentleness, not to beat up or to insult. Justice understood as lawabidingness naturally presupposes law, i.e., positive law, but it can come into its own only when the laws are good, because otherwise the lawabidingness is still something respectable but it is not—is also somewhat questionable. And this, that the laws are good, depends at least partly on their compliance with justice. Now what is that justice in the narrower sense where justice is understood as one virtue among many?

Now Aristotle gives the following example to make clear that we must make a distinction between justice in the general sense, i.e., lawabidingness, and justice in a more particular sense. A man who commits adultery out of desire is unjust as breaking the law and intemperate as prompted by desire, but if he commits that act not out of desire but for the sake of money—I suppose because that woman pays him—he is not intemperate but unjust. In other words, he doesn't lack self-control; he is only anxious to get money, and this is injustice in the narrower sense, in the special sense. Special justice, in a word, is concerned with gain regarding money and other things, with having more than others. The man who lacks self-control, for example, does not as such wish to have more than others. He only wishes to have what he likes. But injustice is having more than others, and therefore justice in this narrower sense means to have what belongs to one and not more. And according to Aristotle this justice in the narrower sense

consists of two kinds, which he calls distributive on the one hand, and corrective or commutative on the other. Now the corrective or commutative justice consists in itself of two parts: regarding voluntary transactions and regarding involuntary transactions. Now the voluntary transactions are such things like buying, selling, borrowing, and hiring; and the involuntary ones are crimes, because your relation to the man who steals from you is an involuntary relation on your part, obviously.

Now regarding these two kinds of justice, regarding buying and selling and so on and regarding crimes, the principle of equality prevails, of arithmetic equality. And this means simply that there must be in a way a strict equality between the things exchanged, in the case of buying and selling. For example, you are a shoemaker and the other man is a house builder, and you exchange. Prior to the invention of money, you would have to give him the exact equivalent in shoes of the house he builds to you. After we have invented money that's simpler: you pay in money for the worth. The implication of course is that there is something like a just price, and a just price which is not determined by the market—that would be merely mechanical—but by the value of the things, the intrinsic value: the labor involved and the value of the raw materials. The just wages would also come in here in some way in this notion, which were, as you probably know, abolished in the seventeenth century, and modern economics is based fundamentally on the principle that there is no such thing as an intrinsic just price and an intrinsic just wage. The just is simply what the market will bring about, the resultant at which the transaction may take place. Arithmetic equality means one does not have to consider the persons. For example, murder. It is absolutely irrelevant in commutative justice or corrective justice strictly understood what kind of man committed the murder, meaning whether he is a nobleman or a commoner, or whether he has great merits or no merits. The simple fact of murder must find its proper equivalent. And this implies also that there are certain fundamental rules of justice, of course, regarding the severity or nonseverity of punishments, what one may call natural penal right. I mean, that one cannot ordinarily punish a small theft in the way in which one can punish murder and some other things of this kind, which no one in his senses questions, is of course part of this notion of right which is then definitely natural right.

The same is true of the other kind, which is distributive and where the person, the ratio between the individuals involved, has to be considered—in other words, where you do not have simple so-called arithmetic equality but proportionate equality. Especially, the most important case is of course the political partnership, the political association, in its distribution of honors. It cannot distribute of honors with arithmetic equality but in proportion to merits. An image or shadow of it is of course also to be found in some partnerships for gain, where the division of the booty, or rather of the gain, is made in proportion to what each brought into the partnership. One can say this is a kind of image of the true distributive equality, which is that—the distribution of honors in the community.

I'll say another word about another kind or subdivision of justice in Aristotle. That is equity. Now for Aristotle equity is—at least in the *Ethics*, as distinguished from the *Rhetoric*—equity is not in itself a part of natural right but strictly a correction of legal right. In other words, the concern of equity is: What did the legislator, the originator of the positive law, intend? And this question arises necessarily because of the essential defectiveness of all law. The legislator cannot possibly foresee all circumstances, all cases, which may arise. For example, the legislator forbids

to take vehicles into a public park, but are toy automobiles or bicycles public vehicles? I found this in a law journal, the examples; I believe it is good. [6]But to repeat, in equity as understood in the *Ethics*, natural right is not involved but only an understanding of the original intention of the legislator, so in order to apply what he would have decided if he were here regarding this particular case.

So this much as a rough summary of the Aristotelian teaching of natural right. I have to take up the most difficult question concerning the changeability of natural right later. This should be separated from the general point, general discussion. Now is there anything you would like to take up at this point? Yes?

Student: Do you mean to say that the commutative is the narrower sense of justice and the distributive the broader?

LS: No. One could rather say that the more noble form of justice is of course [the] distributive. [7]Aristotle starts from this fact: that looking around he sees all the time when people speak about justice they mean something like an equality. But there is this strange thing: but not simply equal; for example, as that this and this has a value of five dollars and the bill for five dollars, it is not always so. Sometimes some men get more than others justly, and therefore it is necessary to distinguish between two kinds of justice: one where the just is simply equal—for example, in punishments the punishment should fit the crime and Aristotle means primarily it should be exactly the same harm [that] should be inflicted. Well, an eye for an eye, not in the form of depriving the other fellow of his eye, but he should give the damaged man the equivalent in money or in other things of the damage which the damaged man has incurred. So he shouldn't give more, and say if the damaged man is[8] a man of the greatest merit or a good-for-nothing, that wouldn't make any difference. But in other cases, whether he is a man of merit or not makes a very great difference. For example, if it is a question of appointments.

Student: What I didn't follow is you said something earlier about a distinction of Aristotle between narrow and broad justice. Could you clarify that?

LS: Oh, yes. Oh, that is—yes. Well, general justice is the same as lawabidingness. The just man is he who obeys the law, meaning he does not rely on his force or on his guile but he does what the law commands him to do. That is the most simple. But this is too general because, as Aristotle shows by these examples—that example which I think[9] is very good, the adulterer is of course unjust in the sense that he breaks the law, but then he is not unjust in another sense. He is not unjust in the sense in which the cheat—you know, say, in business—is unjust, because he is not concerned with gain, with getting more money or whatever it may be. So in other words, we mean by justice (a) general social virtue, but (b) also a virtue which has to do with such things as money, as possessions, and even as honors. It is a different consideration. This is justice in the narrower sense. Yes? And justice in the narrower sense is then divided into commutative and distributive justice. Is this clear?

Student: Yes.

LS: And you can say there is another division or another appendage to justice in the narrower sense, and that's equity. Yes? Good. These are the most important distinctions. You first—yes?

Student: [Question to the effect of whether Aristotle's sanctioning of the relationship between master and slave makes a mockery of the relationship between man and man, if in actual practice one man is a slave and another is a master.][vii]

LS: Well, I do not believe that it is a mockery, but I regret to say that no good example occurs to me. But let us look at it. Take a special case. A man has a slave of remarkable decency and intelligence. That's happened: Epictetus was a slave. And then of course they might be good friends, and of course[10] the master would have the greatest regard for the human dignity of the slave and of everything else. But if it comes to a matter of property, for example, the slave has no property. The master assigns him a room or whatever it may be, or some place where he sleeps. The master can change this any time he sees fit. He doesn't have to pay him any wages. These legal relations remain wholly untouched by the human relation. Is this not a possibility?

Same Student: Yes, it's a possibility—

LS: Yes. [11]Fortunately [we do] not [have] that institution, and therefore we have no experience. We would have to take other examples where two men as the same human beings have relations on two different levels, say, as friends and then also say, as partners in a firm. You know, what connects them as friends does not necessarily affect every business transaction they make. Is this not thinkable? [12]Well, Aristotle never speaks without having specific points in mind. You see, these are never mere constructs; even those things which seem to be entirely abstruse, as that about the perfect king—of which he admits in another place that this is not something which is in fact possible—he has something very specific in mind which indeed would have to be rephrased completely so that you can recognize the fact, the manifest fact which he has in mind.

Now, but you started with another thing. For example, the relations between two people who are not fellow citizens, say, two people meet in high mountains, both complete strangers. Number A doesn't like the face of B. Can he kill him, insult him, and whatever he wants? Aristotle says, Of course not; there is a relation of justice even among the complete strangers. Now if they would [make an] exchange there—[13]one has, say, an umbrella and the other has overshoes, or whatever you like—yes?—and they want to exchange it. They have a good reason for doing so. Well, of course it goes without saying they can act honestly on that occasion or dishonestly, whether they are fellow citizens exchanging on the market or both complete strangers in the wilderness. Does it not make sense? So relations of justice obtain among [people] everywhere. But Aristotle says, and quite reasonably, that the people who always live together have of course many more relations of justice than people who meet once on a trip. Obviously. And they have common responsibilities, these fellow citizens, which complete strangers do not have. So that, I think, makes sense. There was someone else—were you? Yes. Mr. Boyan?

Mr. Boyan: Yes. I'm sorry; I just don't—I'm still not clear as to the distinction—the first distinction . . . when you talked about the adulterer. It seems to me that that distinction isn't

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[vii] As noted by the transcriber.

clear, because I don't see where you couldn't [imagine] a society where this sort of thing was not violating a general social virtue, a political society. What would happen? I don't understand.

LS: Yes, well, then you raise a different question. If polygamy is an established institution, then the man who has *n* wives does not commit adultery if he has relations with one of these *n* wives.

Mr. Boyan: [Question as to whether Aristotle would regard as an aberration some society in Asia to which the questioner refers.][viii]

LS: Yes. No, he would say it's a very defective society, because[14] infinite troubles and confusions will arise if no one knows who his children are, for instance. And other things. But Aristotle would indeed take for granted monogamy.

Mr. Boyan: Oh, he would.

LS: Yes.

Mr. Boyan: Well, then there's of course the problem that—his definition of what's natural as core. This core doesn't seem to be a very consistent core—

LS: Oh, I see. Well, this is already my interpretation; I mean, one possible interpretation.[15] Well, in one way or the other, people have some property. Even if all means of production are socialized, each one has still his loaf of bread, yes? So theft and robbery and other things are possible there; murder obviously [is also always possible] because no communism can ever take away a man's body from him and still keep him. That's impossible. So, good. But the same can apply of course also to women. Even if there are only what I hear is called a Wednesday steady, a girl can take away a Wednesday steady from the other girl, so even here there would be justice and injustice. Something of this kind would always be there. [16]The question is: Is there anywhere—I mean, I address this to the trained anthropologist—unqualified promiscuity? I ask. I have never heard of such a case. In that case, of course, this difficulty couldn't [arise]; this situation would never arise. But Aristotle never doubted that there could be all kinds of unreasonable human arrangements. That is another matter. But the effectiveness of natural right, he would say, would show in the fact that in such a society which doesn't provide for these bare minimums of civilized life [there] will be [a] complete impossibility of a full development of man; and this, I believe, would be hard to refute even on the basis of anthropological evidence, because these things occur all in so-called primitive societies. Yes?

Student: [Question referring to Aristotle's doctrine of the changeability of natural right.][ix]

LS: No, no, no, no. I will take this question up, the question of mutability or changeability of natural right as Aristotle means it, later. He would surely say that this changeability would be the same everywhere, i.e., if certain deviations from what is ordinarily regarded as just in itself are just, then they are just everywhere whenever the specific conditions are given. [17]I suggest we keep this—this is the most difficult passage. Now for Plato it is so: the unchangeability of the

[viii] As noted by the transcriber.
[ix] As noted by the transcriber.

idea of justice requires the changeability of anything related to justice which is not the idea of justice itself: no man, no city, no law, is perfectly just. Hence its changeability is in principle necessary because it is of imperfect justice. Whether it is in fact possible is another matter; that's an entirely different question. For Plato all right, apart from the idea of justice itself, is changeable. Namely, think of this, take the *Republic* quite literally: The right institution is the rule of philosophers, but if there is no possibility of establishing it, is this wrong? Of course not. And then you have another institution, inferior, which is the just thing under the circumstances; but it is of imperfect justice, because not everyone will get what is good for him as distinguished from what the law assigns to him. That's a different question. Yes?

Student: [Question to the effect that in Plato wisdom is qualified by consent: diluted natural right. Is the Aristotelian kingship, then, also diluted natural right?][x]

LS: No, no. Very good that you bring that up. Aristotle's natural right is apparently in no need of being diluted. I mean, for example, if there is a fair exchange in the sale or in the barter, what is there to be diluted? The question of whether the one who gets the umbrella would be better off if he would get wet is irrelevant. For Plato strictly understood it is relevant, because everyone should get what is good for him. Do you see that? By cutting off this consideration from the consideration of justice proper, Aristotle arrives at a right which is not essentially in need of being diluted. Aristotle is much closer to what we ordinarily understand by justice.

Student: Is this what he means by its changeable—

LS: No, no, because this in itself wouldn't—why should it be changed?

Same Student: Well, I was thinking that you have principles of right, but you want to make decisions out of them and all that changes is the circumstances.

LS: Yes, that is in a way true, but I believe one can state it more precisely, and I will take that up separately. Yes?

Student: [Question to the effect that if justice in the general sense is law abidingness and moreover, if it can only come into its own when the laws are good, does it therefore follow that when the laws are bad it is unjust to obey them.][xi]

LS: No. Well, that is not so simple, and Aristotle makes in this context a remark: the legal is somehow the just. Somehow. [It is] qualified. The legal is not simply the just, because there can be bad laws. The question is—the practical question, and Aristotle's *Ethics* is practical from the first to the last page: What follows from that for action? Aristotle has not answered the question, this question, but one must use one's own judgment. And well, he has discussed it however in the second book of the *Politics* where he raises the question whether the change of laws is simply good, meaning of course of bad laws. Well, the connection between the two questions is obvious. Justice is primarily obeying the law, but if the law is bad, justice would seem to become something bad. It can become good only if the unjust laws are replaced by just laws. Hence,

[x] As noted by the transcriber.
[xi] As noted by the transcriber.

unjust laws or bad laws should be changed immediately. Aristotle says: No, that is a very complicated matter, because if the defect of the law is relatively slight, if it creates only relatively minor injustices or hardships, then you have to hold against it the great importance of legal stability, of social stability, which is damaged by frequent changes of laws.

So in other words, the clear thing is you have to obey a law even if it is not altogether just. That there are cases of terrible injustices in which this would not apply, Aristotle by implication admits. But even here the question is: Should every man, every citizen, have the right to disobey the law? Should he not rather do his best to get the law changed if it is so preposterous? And the principle is this: every law, however foolish and stupid, is better than the mere rule of the will and whim of men. Every law, because of its generality. The judge who applies an unjust law does not necessarily bring in any passion of his own, but the man who dictates decisions regarding every individual case can bring in his passion in every particular case, to say nothing of the fact that laws are publicly pronounced, and a certain sense of decency, of decent respect for the opinion of mankind, prevents even very nasty and unjust legislators from stating in the laws what they would do in their [atrocities][xii]. A beautiful example is supplied by the Nazis. I mean, what the Nazis—the most horrible things they did were not based on any laws, not even on any Nazi laws; they were done simply by executive decrees, and—[xiii] —the big bad law which the Germans established in Eastern Europe. There was an article on this in the *Harvard Law Review* some years ago by Professors Fuller and Hart, on this very general question.[xiv] And this was very well argued out, and a detailed proof on the basis of modern situation, modern experiences, modern concepts that the rule of laws, even of bad laws, is better than simple lawlessness. And the principle? Law, because of its generality, contains an element of reason as such. This is not meant as a defense of unjust law—that goes without saying—but only for showing that it is not absurd as to start from this crude notion according to which the just man is the lawabiding man, although many of the laws by which he abides are of imperfect justice and some may even be downright unjust. But Aristotle doesn't leave it at that; Aristotle makes clear that there is a meaning of justice, a more narrow meaning of justice which is well definable in his opinion, and that is what he says about commutative and distributive justice. There was someone else. Yes?

Student: [Requests a comparison between Aristotle's position regarding the law and Plato's or Socrates's in the *Crito*, where he stays in jail.][xv]

LS: I think there would be no difference. May I make a general remark, that I do not believe that there is any difference in any specific matter, private or public, between men like Plato and Aristotle, and Thucydides and Aristophanes and who have you. We are accustomed in modern times—we think that every philosophic position, every system, as we say, leads necessarily to great divergences regarding public and private matters. No, they were all decent nice gentlemen apart from the other things they were. There is no serious disagreement among them; and I

[xii] The transcript has a blank space here.
[xiii] The tape was changed at this point.
[xiv] H.L.A. Hart, "Positivism and the Separation of Law and Morals," *Harvard Law Review* 71 (1958): 593-629; Lon L. Fuller, "Positivism and Fidelity to Law—A Reply to Professor Hart," *Harvard Law Review* 71 (1958): 630-673.
[xv] As noted by the transcriber.

would say even if there were some particular disagreement regarding one particular matter, whether it's better that poor girls should marry wealthy men or vice versa—even if there would be, there would not necessarily be a connection between this practical difference and their theoretical principles. There is no difference. Mr. Butterworth—oh, I'm sorry, you come now.

Mr. Butterworth: On this business of the fact that Aristotle's natural right does not have to be diluted, assuming that you have in the community of justice this exchange of shoes for a house, and that the house is worth fifteen pairs of shoes—

LS: A very small house. Yes, why not? Yes. Yes?

Mr. Butterworth: Assuming that the shoemaker gets the house and the housebuilder gets the shoes, it makes no difference to Aristotle whether the housebuilder needs all those shoes or the shoemaker needs the house.

LS: No. And also not whether the house builder is a man who spends his time apart from house building in getting drunk, beating his wife, or whether he is a wonderful husband or not. That's also the point. You know, I mentioned that before. We consider here only the exchange transaction. If he commits fraud in it, that's relevant, but if he is honest in that—

Mr. Butterworth: As long as the single act is just—

LS: But if they are running for office, then one considers them, and therefore this is a matter not of commutative but of distributive justice.

Mr. Butterworth: Well, even the distributive business: assuming that in the single act of giving the honor, the man who was worth three times as much as the other man gets three times as much honor—

LS: Yes, but here you have to consider the whole man somehow, at least much more, whereas in the other case you do not consider the man at all. Yes, Mr. Butterworth.

Mr. Butterworth: It would seem that Aristotle was asking a different question than Plato was in talking about justice.

LS: In what way?

Mr. Butterworth: Well, in that Plato would be asking what is the essence of justice and Aristotle would be asking much more specific questions.

LS: Aristotle asks the same. I mean, Aristotle asks the same. That would not be the difference, I don't think. But Aristotle is simply—well, I gave this example: Just as Plato says there is no moral virtue in the Aristotelian sense, because there cannot be genuine virtue of anyone except philosophers, for the same reason Aristotle admits a genuine natural right, say, commutative justice, whereas Plato questions that. For Plato, one can say, all natural right—all actual right has of course higher principles, but they are diluted; they must be diluted in order to become

politically useful. Do you see that analogy? Because, take the simple case. Let us take this again. Just exchange: the things exchanged are of equal worth or value. Plato raises the other question: Is it good for A to get the fifteen pairs of shoes? Is it good for B to get that house? And which from a very broad—from the point of view of a physician of the soul, it is of course an absolutely necessary consideration. But Aristotle says the statesman or the judge or whoever it may be is not a physician of the soul. He has a much more limited function, and this function is sufficiently well defined so that one can speak of what is intrinsically correct or right or not. [18]I mean, Plato was of course a man of very great common sense, let us not fool ourselves about it. I mean, he was perfectly able to sell his olives or whatever his estate produced in order to finance his trip to Sicily and other such things; this is an eminently practical man, as you see from this example. But in his philosophic discussions he refuses to stop where we rightly stop for practical purposes. The most beautiful example and most simple example is supplied by the *Laches*. Did I refer to that in this course? I don't want to bore anyone. Well, here the question arises whether a certain kind of physical training is good or bad, and two men who are real experts, say, colonels of marine regiments, discuss it: Which makes a better marine, this or that? And they don't agree. It happens. And then Socrates is dragged in and he knows very little about this marine business, apparently, and he says: However, well, before we can settle that we must first find out what courage is, because they are men to be trained for courage.[xvi] And of course they get into troubles. No one knows precisely what courage is, and the whole practical issue is completely forgotten.

Now if you generalize from that: men could never reach any practical decision if they would have to answer all questions of principle first. Yes? That's clear. So Aristotle starts from this fact, and he says we must start from crude principles which are sufficiently good for practical purposes. That is what he does in his *Ethics*. What he says is not so very crude at all, as you would see immediately, but measured by Platonic standards it is very crude. Take this example: Why should facing death on the field of battle be more an act of courage than what a physician does in times of plagues, and what even a rooflayer, a bricklayer, does ordinarily? Why should this be so? Well, facing death with one's eyes open: that constitutes courage, and forget about war in particular. Aristotle would say: No, I won't forget, because when people speak about a brave man they mean primarily the soldier in the majority of cases, and that has good reasons because this kind of courage is much more important to the community than the courageous physician. Do you see the inexactness, the wise inexactness of Aristotle? That's it.

Mr. Butterworth: Doesn't this sort of corroborate what I was saying, that Aristotle is asking more practical questions?

LS: Yes, but the practical question cannot be put in the form that Aristotle does not ask what the essence is. Aristotle asks what the essence of courage is as much as Plato, but Aristotle is satisfied with answers which are excellent for all practical purposes but which leave certain fundamental things of great theoretical importance undefined. Do you believe Aristotle tells you why he limits himself in discussion of courage to courage on the field of battle? He doesn't tell you. You have to figure out that by yourself. But he talks to sensible people, meaning to people of some practical experience, and they would see immediately that is the courage with which we are primarily interested. That's the way in which he always proceeds. And Plato transcends

[xvi] A paraphrase of Socrates's statement in *Laches* 190d.

always this level everywhere, and so that one does not—one sometimes has great difficulty in recognizing what drives Plato to this height, and there is always a very good reason. But this—I leave it at that.

Mr. Butterworth: Wouldn't it be pertinent here to ask why Aristotle limits himself to this sensible man, crude man's—while Plato goes on beyond . . .

LS: Yes, but—yes, yes, sure, that is no difficulty. Yes, the usual answer is of course to link it up directly with Plato's transcendent ideas beyond everything sensible and Aristotle's asserting the idea is in the being—or to use the simple example: What is a true dog? The dog who doesn't wag his tail and wasn't born and will not die, or is the true dog the fellow who barks here? Surely it is somehow connected with that, but one could on a Platonic basis make a strong case—and there is some Platonic evidence for that—for saying that surely[19] there is a certain limit beyond one practically never goes, and stop there. I mean, Plato has enough of these commonsensical things in him. Yes. No, Mr. Megati, you were neglected . . . Mr. Boyan?

Mr. Boyan: You talked a minute ago in answer to another question of Aristotle's idea of disobedience to the law. How would you say that he and Plato differ on that, if at all?

LS: I don't think they differ. Well, of course Aristotle never discusses the question whether one may disobey the laws or not. The implication, however, is [that] one should obey the law. That's the same which Plato also says all the time, but nevertheless Plato makes it clear, clearer than Aristotle, that there are cases in which one must not obey the law like that. The single classic example: Socrates refuses to obey a law which in his opinion was then not enforced in Athens, that one may not philosophize. So if the people of Athens would say it is a capital crime or even less than capital crime to philosophize, Socrates would openly flout that law. That he made clear. And you can also imagine some other laws which he would not have obeyed.

Mr. Boyan: But if the law is unjust for Plato, fundamentally unjust, then he makes exceptions.

LS: Yes, but that is still—that won't do. Even if you know that this law is unjust, the question whether you can justly disobey it is a different question, obviously. I mean, think of Prohibition.[xvii] Was it so clear, even assuming that it was an unjust law, is it so clear that one could openly—I mean, or secretly for that matter—transgress it as a just man? It's still a question. Yes? Good. Now I will now turn, take up this major point, the greatest difficulty: Aristotle saying that all natural right is changeable.

Now this clearly applies to the best regime, to that divine regime called kingship, because it is not always possible; and this means of course the changeability: that in most situations, to say the least, it cannot be established although such a man is there. But it applies of course also to the minimum conditions, what I call the minimum conditions: the minimum conditions of social life. Thomas Aquinas in his commentary on that passage denies that.[xviii] He says the principles of

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[xvii] In the United States, a nationwide law prohibited the production, transportation, and sale of alcohol from 1920-1933.

[xviii] St. Thomas Aquinas, *Commentary on Aristotle's* Nicomachean Ethics, trans. C. J. Litzinger (Notre Dame, IN: Dumb Ox Books, 1964), sec. 1029, 327-29.

changeable things must be unchangeable. Those things which belong to the very essence of justice cannot be changed, and he imputes to Aristotle—he says Aristotle must have meant it that way. The example which he gives is "one may not steal under any circumstances," but the same would apply if we admit the Aristotelian examples. One must worship the gods under all circumstances, whereas how [one worships], that depends on positive law. In the *Summa*, Thomas discusses it in this form: Can the law of nature be changed? And he says again the first principles of natural law are altogether unchangeable, but not the conclusions following from the first principles. Look at it in a way as if this were a mathematical argument. Here there are some axioms: they are unchangeable. And then you go down; and the more you go down the more they become changeable—the conclusions. For example, stealing is simply forbidden, but returning deposits, which follows from the sacredness of property, is not always just. For example, if the deposit is a weapon and the owner, the rightful owner of the weapon, is a traitor, in that case it would be unjust to return the gun. But still Thomas, in the more detailed discussion of theft in his *Summa*, says to steal because of urgent necessity—I mean, the alternative being dying—is not a sin. I think this is[20] one part of what Aristotle means. There are extreme situations in which what is by nature right is justly changed. In other words, it is by nature just that the man in the extreme situation steals. It doesn't need positive law for that.

The most striking example of the changeability of natural right in Aristotle would seem to be the following one: what he says about slavery. According to Aristotle only the enslavement of men who are by nature slaves is just. A man is a slave by nature if he is completely unable to live, to act, under his own power, meaning under his own mental power. Let us take a case of a half-moronic man. He is best off if he is throughout his life in tutelage. You tell him everything he has to do; say he is a very strong fellow, and he should be strong so he can do some hard bodily work[21]—he is pretty good for that, and that's all he can do—so you tell him to bring five trees from one place to another. He can count to five and you show him: one, two, three, four, five, and this kind of thing. And of course you take care of him; he gets his food, and gets his place where he can sleep and so on. This is a natural slave. But when he speaks later on in the seventh book of the *Politics* of slavery, he says it is important that the slaves should be given the hope of emancipation. Now slaves who can become emancipated are obviously not natural slaves. Slaves, he makes clear in this seventh book, must not be spirited fellows, because then it's difficult: you know, they won't obey. Now those coming from the cold regions of Europe are not intelligent but spirited, so no Thracians and this kind of people, no men from the Balkans. Those from Asia, however—I think he has primarily in mind the subjects of the Persian Empire—they are not spirited; they are accustomed to practical slavery anyway as subjects of the Persian king, but they are intelligent, clearly. But the fact that they are intelligent would seem to show that they are not natural slaves. The slaves who are of any use for a city are not natural slaves, and yet Aristotle takes this institution for granted. Now this is clearly a change, a deviation, from natural right. I do not believe that Aristotle would have accepted that if he had regarded this as simply unjust. He would have said: That's a change; two principles come into conflict and strictly speaking there should not be anyone a slave who is not a natural slave, but on the other hand the city, in order to be a city, in order to have a leisure class, must have slaves; and since it is much more important that there are centers of civilization, as they would say today, this higher principle demands a change in the lower principle.

So if we see now regarding Thomas's point that there must be clearly a principle which remains unchanged—and that is of course true—the principle would have then to be said to be the common good. The common good may supersede the principles of natural right in the narrower sense. The *polis*, as a society which makes possible the full development of man, may do that. In fairness to Aristotle, we must say there is of course a theological equivalent to what Aristotle in fact does in his *Politics*, and that is a discussion in the *Summa* of the cases in which, as Thomas read the Bible, God commanded certain acts, say, of theft. For example, the exodus of the Jews from Egypt, where the Jews were ordered, or—yes, were ordered—to borrow, to loan vessels and so from the Egyptians, and this was understood at least in the Christian tradition as a commanded theft. Well, and the construction given is then—well, since God is the true owner of everything, when he commands a taking away of something from someone else it is not theft. Well, that is of course also something parallel, namely, a common good: all men and their rightful ruler. So it is along these lines that I believe we must understand Aristotle.

Full agreement between Thomas and Aristotle cannot in reason be expected. As you see from this example, the only example, or almost the only example, to which Aristotle alludes in his explicit discussion of natural right in the *Ethics*, namely, sacrificing to the gods—generally speaking, divine worship—is an institute of natural right. When Aristotle speaks in the *Politics* of the things which are necessary for the city, like an army and magistracies and so on, he says in the fifth and the first place the care regarding the divine.[xix] That's essential to the city. The theoretical basis of that care for the divine is not a philosophic theology, [a] philosophic doctrine of god, but the additions to it of a mythical character which are required for inducing the many to obey the laws, as Aristotle makes clear in the twelfth book of the *Metaphysics*: civil theology, we may say, the term coined shortly after Aristotle.

But for Thomas Aquinas these are of course false religion, and hence compliance with them cannot be a duty of natural right. What then does natural right demand—*natural* right demand—regarding religion? I quote a few passages from Thomas. Somewhere in the *Summa* he says that reason informed by faith dictates that God must be loved and worshiped.[xx] Now if reason informed by faith says it, this means not reason by itself. This cannot be a natural law command. [22]Elsewhere he speaks of man's natural inclination to know the truth about God.[xxi] Now that's another story. This, to know the truth about God, is one thing; worship and love is another thing. In the state of pure nature man loved God above everything else by a natural appetite. But here Thomas again says, "But the question which is here not answered: Did man in this state know that this was a duty?" We hold many things by faith about God which the philosophers could not establish by natural reason—for instance, that God alone must be worshiped. So all worship of creatures is idolatry, the greatest sin. Of course, this Aristotle cannot have meant because he was himself an idolator. When he [Thomas] says that religion as reverence for the divine is a virtue, he characteristically does not quote Aristotle as an authority, but Cicero. He says that the bringing of sacrifices is an institution of natural right, as is shown by the universal practice of the thing. But the determination of sacrifices is by human law, not by divine law. According to the true faith, only to the highest God can one bring sacrifices. Natural reason by itself leads only to a false religion. This is a great difference, and [one] that has of course infinite practical

[xix] *Politics*, book 7, 1328b2 ff.
[xx] *ST*, 2.2 q81, art. 1, responsio.
[xxi] *ST*, 1.2, q94, art. 2, responsio.

importance, as I will briefly explain, because if this is so, then the question arises inevitably: What is the worse thing, a false religion, [to] worship false gods, or no religion? This question became very important in modern times in the seventeenth, eighteenth century, when the whole question of religious toleration became the central theme. In this age a French writer, a Hugenot, Pierre Bayle, wrote a book, *Diverse Thoughts on a Comet*, *Pensées diverse sur la comète,*[xxii] in which he made the assertion—[he] went to the extreme by saying a society of atheists is possible, possible and preferable to a society of idolators. Preferable to a society of idolators. The more moderate solution which prevailed, then, is: the true religion is the natural religion[23]—and that meant, of course, a monotheistic, deistic religion indifferent to revelation. Now this whole question of course one must take into consideration in order to understand the difficulty which arises on the basis of Aristotelian natural right. The whole question of tolerance, the whole question of the First Amendment, one may say, is linked up with natural right most fundamentally through the religious issue.

That there must be a fundamental difference between Thomas and Aristotle, and therefore the Thomistic interpretation, while being the best available interpretation, is not necessarily correct follows from this simple consideration. Thomas Aquinas assumes that there is a habit, a *habitus*, of practical principles, of the principles of action. This he calls, with a word no longer used in general language, *synderesis*. We may roughly call it the conscience. The conscience. There is no such thing in Aristotle. The term conscience or its Greek equivalent came into being after Aristotle and even then did not have the meaning which it has acquired in the Christian tradition. Now this *synderesis*, this conscience, is as it were the storehouse of the highest principles of action. When one raises the question "What is the cognitive status of the principles of action in Aristotle in the *Ethics*?" one comes up against a very great difficulty. No answer really is given there. For Aristotle the view is, I think, roughly this, as appears from another work. The moral syllogism, if one may say so, has this form: This and this is the end of man; I am a man; this and this is my end. Now "this and this is the end of man" is a theoretical assertion. It is at home in the study of physics as Aristotle understood it: science of nature as natures. So the basis is—the principles are theoretical. They become practical by application to individual men in individual circumstances. There is no place for a *habitus* of practical principles, it seems to me, in Aristotle; and therefore it is perfectly possible that there should also be a difference of view between Aristotle and Thomas regarding natural right. And I think this difference becomes perfectly clear in this statement, which is in no way qualified by Aristotle, that natural right is changeable: that there is no principle, no proposition of justice which is true without any qualification. So there is no dilution of natural right as in Plato, but there is a changeability of natural right. Mr. Gold?

Student: Is that to say that the principles pick up their changeability when they become practical but that it means that there are principles which can be intuited and which are universal in the way that Thomas talked about them, but that in referring them to the individual—

LS: Yes, well, how can they become practical except by being acted upon, i.e., by individuals? Let me state it more simply: there is an order of ends which is unchangeable. For example, that the theoretical life is higher than the political life, [and] that the political life is higher than the economic life. That's no question for Aristotle. But the subsumption is another story. I mean,

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[xxii] Pierre Bayle, *Various Thoughts on the Occasion of a Comet*, trans. Robert C. Bartlett (Albany, NY: State University of New York Press, 2000).

from this it doesn't follow, of course, that everyone should lead the theoretical life. Most men should lead the economic life, so to speak. Yes? Do you see that? The hierarchy of ends—or, as they say now, of values—that is unchangeable, but the application is of infinite variety. [24]The more specific point, however, which we are discussing now[25] does not concern the hierarchy of the ends. It concerns the means to the ends: what a man should do in order to achieve the end for which he is fitted. And here Aristotle says if all natural right is changeable, there is absolutely no rule of action which you can establish which is not open to qualifications. And if you think that Aristotle has of course also in mind the actions of cities or states and not only those of individuals and the infinite complexity of what is now called foreign relations, you can easily see how a man can arrive at this decision. I mean, if you take very strictly the Thomistic teaching—for example, lying is under all circumstances bad—well, there are some natural allowances made for things which are not really lies; when you sign "Your obedient servant," that's of course not a lie—but any lie.

Well, what about war? In war, then either you say these are not lies—but then the question arises: Do you not really conceal the difficulty of the issue by saying this case isn't a lie? But all right, war, let us say, is a special case. But then the question comes up immediately: there are just wars and unjust wars according to the Thomistic teaching. There are just wars and unjust wars. Now it is clear that the individual fellow, soldier, is in no position to decide, to find out, whether the war is just or unjust. You know? He simply will go with his country; [he] must go. But then the other case: How infinitely difficult is it to decide in many cases whether a war is just or unjust? We had this experience—you in your generation of the Second World War, where the question was extremely simple. But in the First World War it was not so simple, and if you would simply say: Well, he who shot the first, who shot first is the aggressor, this is of course a very crude criterion which will not hold water. And war also affects peace. To speak a bit more simply, in peace people prepare themselves for the next war even if it won't come. But still the next war will not come if people prevent its coming by being properly armed. [26]And you have then such institutions like espionage. Yes? President Eisenhower was so honest—I believe that was the first case as far as I know, where a governor frankly admitted that his country engages in espionage.[xxiii] Good. But how can you possibly spy without lying, without cheating, without perhaps killing? You know, it is very hard to draw these lines, and here difficulties arise. They can even arise in unstable societies in civil wars where one cannot know what decent men blamelessly do surely after a civil war has broken out. Where will you draw the line? So in other words, there is a certain presupposition of a tolerably normal situation in which these rules can rightly be said to be universally valid, but this condition is not fulfilled in times of armed conflict, international or intranational, and this of course is by no means an irrelevant consideration. I believe it is a consideration of this kind which affected Aristotle's remark. You see, to repeat, what Aristotle says is that there are cases in which the natural right can be justly changed, so that this changed decision—say, here [the] lying of the man who is spying for his country—is a just act and not merely an excusable unjust act. That is the point.

[xxiii] In May 1960, a U-2 spy plane, flown by pilot Gary Powers, was shot down while over Soviet airspace. Though he at first claimed that the U-2 flight had been conducting a routine weather flight, Eisenhower acknowledged a few days later that he had been aware of and approved the spy program and the Powers flight. See, e.g., https://history.state.gov/milestones/1953-1960/u2-incident.

Student: What does Aristotle have instead of *synderesis*?

LS: There is nothing. There is no *habitus* of practical principles.

Student: Well, how are the first principles of—

LS: They are the end or ends of men and they are themselves theoretical. This is in a way admitted by Thomas Acquinas too, but he asserts nevertheless that there is a *synderesis* in addition, *habitus* of practical principles.

Student: But are they empirical principles?

LS: No. Of course not. Well, the distinction doesn't exist between empirical and *a priori* as it is made in modern times, but they are surely not—they are principles which are universally valid, the highest principles. The good to be pursued, the bad to be avoided. That is the highest.

Student: Well, what's the motive that men have for avoiding them?

LS: Reason. I mean, it is as rational as that of theoretical reason.

Same Student: It's not the same as theoretical reason.

LS: No. No. But reason is both theoretical and practical.

Student: Isn't that the question of what he means by the man of practical wisdom?

LS: No, the man of practical wisdom—that is, you mean Aristotle now. Yes, sure, the man of practical wisdom is a man who has much more than these general principles. That [alone] wouldn't make him a practical[ly wise man], no. The man of practical wisdom is the man who is able to make the right decisions by himself. I mean, to the extent to which he needs, is dependent on guidance by others he is not strictly speaking prudent.

Same Student: In the place of *synderesis*, would Aristotle have the man of practical wisdom?

LS: No, no, no, no. Thomas Aquinas admits, of course, also prudence. Prudence is a virtue which is not—every man has the *habitus* of the practical principles whether he is prudent or imprudent, virtuous or wise. But the right use, the right application to specific cases of the principles, that would make a man prudent according to Thomas. Someone else raised his hand. I forgot—yes?

Student: Well, Aristotle, in his *Ethics* it seems to me doesn't discuss things in the syllogistic form. He says at the beginning of the *Ethics* that ethics is a practical study and that you can't have strict syllogisms.

LS: Yes, but that has to do with the status of the maxims, the majors of the syllogisms, what he says there. But he speaks of these practical syllogisms, for example, in his book on the soul. Yes. No, no, there is no question. And you can easily—I mean, after all, do we not reason when speaking about practical matters?

Same Student: But ultimately for Aristotle it's necessary to base his ethics on a syllogism, and that syllogism involving a premise of the natural hierarchy of ends—if that's so then it rests on some physical—

LS: No. Of course not. I mean, that would make[27] ethics or moral action a preserve of philosophers, and that is exactly what he does not want to do. No. These people are gentlemen and they know the nobility or splendor or beauty of the virtues. Yes? That they know, and on the basis of that they act. But this knowledge of the beauty of the virtues is not sufficient. Well, in the first place, the place of reason is very simple. What is choice for Aristotle? The result of deliberation, and if deliberating is not a rational act, I don't know what it is. Now how does it come out? You need money—I hope you do not, but some of us need money—you need money and then you deliberate about how to get money; and there is an infinite variety of ways but most of them are excluded by decent men *a priori* because they are indecent. And the crooks, however, are particularly interesting because they are, it seems sometimes, more convenient. Yes? Good. So decency, the awareness of the beauty of the virtues, affects the deliberation by exclusion. That's the first step, yes? And then you select from the five or four decent ways[28] the easiest and least cumbersome as a practical best. That's how we are supposed to act. Well, in many cases we don't have to deliberate so long because earlier experience permits us to abandon the deliberation. We know. Yes? Good. But then it is only a telescoped deliberation, but the deliberation is in. Yes?

Same Student: Well, contrary to what I previously thought you said and what I previously thought Aristotle had said, you seem now to be arguing that—to be interpreting Aristotle in a way that the theoretical justification for ethics rests on some view of the cosmos.

LS: No! No, no, no. Well, there is something to what you say. I haven't made this sufficiently clear, but I did not mean to say [that]. Let us return to our example. The highest principles we have hitherto seen are, say, the beauty of the various virtues. These are the highest principles beyond which Aristotle doesn't go in the *Ethics*. Now the question arises: If this gentleman is confronted with a very intelligent nongentleman and who simply says, "I don't see that beauty." Every positivist today says this in fact, [though] not in [these] words. They don't see it. Prove it to me. And then he says it is hard for him to prove it. It's hard for him. It's obvious. Well, he may try to give some reasons, but they are not sufficient. In Platonic language, he cannot prove clearly that the virtues are good. He "knows" that they are good because he has a decent upbringing. On this level, you can say the argument is circular. Only gentlemen know truly the principles of gentlemanship. You have to be brought up as a gentleman to know them. That seems to be pure circularity, but it is of course not quite so because the gentlemen see in many cases that the nongentlemen pay genuine, spontaneous respect to the gentlemen because they see it is really nice to be generous, magnanimous, fair, and so on. Yes? Good. Beyond that we do not go in the *Ethics*.

You see, that I said before. Plato deduces the virtues from the nature of the soul. The soul has *n* parts; each part has its specific perfection, and this specific perfection is one virtue. Aristotle, as I said, he looks around and sees what are the virtues to which we refer all the time, and let's see. Let's just make a list of them and then see, did we omit anything and, if not, if no one knows of any other virtue which he has mentioned, that seems to be all right. That's Aristotle's seemingly empirical procedure. [29]Of course, in some cases—clearly in the case of justice—Aristotle goes into the question why justice is good, namely, that life, human life, is impossible without exchange, and people would not exchange things if there were not an overall possibility at least of just exchange; and the same applies of course also to distributive justice and so. But in the case of the other virtues he doesn't give this deduction. Well, in some cases it is easy to give. For example, that on the whole temperance, not to overeat and overdrink all the time, is really very bad for a man; but this is not quite sufficient because the question is then also [that] the overall reasonableness cannot mean universal reasonableness. Why not from time to time overeat, overdrink, and then maybe also cheat? That's the question. So that is not a sufficient deduction, and the sufficient one would be the link-up with the end of man, and this leads beyond practical philosophy into theoretical philosophy.[30]

Now let us assume the simplest case, the case of the man of the theoretical life, which according to Aristotle is the highest. [31]It is not enough for him to know that he wishes to devote his life to contemplation, yes? He is a man living in a special situation with these and these men, at this and this age, and so on. He must deliberate about how he can get the time and the circumstances in which he can study, to use a very simple fact. Yes? Deliberation. Deliberation. And here the question comes in, of course: Yes, but still he would like to study, but then he is called into the army. This is nothing which [he desires]—it is a hard fact from his point of view, but he must think about that. He cannot evade it, of course. Why can he not evade it? Then the whole question comes up, if you want to have theoretical clarity: Why is this highest end of man not properly fulfillable except within civil society, and must not the man of contemplation be also a citizen in order not to destroy that in which he is ultimately most interested, and so on?

In other words, whenever you read the *Ethics* with your private questions in mind, then you understand it, but if you read it from the point of view of a purely theoretical discussion about value-free and non-value-free social science, then you have great difficulties in understanding. Aristotle has always people in mind. One can say he has always people in mind who think, who have some experience, and a considerable experience even, in solving their private practical questions, and who have however one other condition that he takes for granted: they must be settled. It must be a settled thing with them that there is a difference between decency and indecency, and that they are men who are absolutely in favor of decency. He does not go out and disprove the principles of indecency, as Plato does, you know, in the *Republic*, in the *Gorgias*, and in other places. That he does not do. This is the great strength, and you can also say the great weakness, of Aristotle's *Ethics*, that he does not give this argument. But you can also see that the theoretical defect is only the other side of a great practical virtue. Yes? Good. Mr. Lyons?

Mr. Lyons: [. . .]

LS: The necessity of divine sanctions for oaths, for example. Yes, the notion of gods of human character or shape is, as Aristotle says in the first book of the *Ethics*, an invention by legislators

in order to make the many lawabiding. The *polis* is not possible according to Aristotle without such a civil religion; and since this is so, there must be [such gods]. Since it is so universal for human society as society, it is an institution of natural right and not dependent on the opinions of this or that *polis* or its legislator. What depends on it is whether you should sacrifice a pig to god number A and two goats to god number B. That depends on ultimately—well, formerly [32][on] some religious authorities, you know, but they are ultimately established by the *polis*. [33]That you go to Delphi to ask there the god what you should do, that is ultimately due to a decision of the *polis*, in the understanding of Aristotle. Yes?

Student: [. . .]

LS: Well, there are various things. Of course, on the lowest level, a consideration of interest. Consideration of interest. I mean, after all, it is inconvenient to live in the wilderness, so not to be a citizen, obviously. But [this is] on the lowest level. The second point: such things as patriotism, love of the *polis*. But according to Aristotle these two motives, self-interest and love of the *polis*, are not sufficient if there is no religious sanction, as we say, added. Therefore there must be such things as sacrifices and prayers. But which? That depends entirely on the human legislator. I mean, of course Aristotle does not say explicitly that sacrificing to the gods is an institution of natural right, but since this example—the example of the two sheep and the one goat—is given, and [given] as an example of legal right, the inference that sacrificing as such is not merely legal right seems to be natural, but he doesn't say it explicitly. Well, so next time we will then turn to the Stoics and Cicero.

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[1] Deleted "because."
[2] Deleted "well in the later—I mean,"
[3] Deleted "there is."
[4] Deleted "Now."
[5] Deleted "that it might."
[6] Deleted "so."
[7] Deleted "No, no. But both are—."
[8] Deleted "—whoever he may be."
[9] Deleted ", which."
[10] Deleted "there would never be—."
[11] Deleted "Yes, now one must—you see, well, we have."
[12] Deleted "I mean, I think that is."
[13] Deleted "I mean."
[14] Deleted "what kind of troubles—I mean, they can also—."
[15] Deleted "And I would say even there one can—there is—."
[16] Deleted "You know, a simple."
[17] Deleted "I will take"
[18] Deleted "Plato never—."
[19] Deleted "one must"
[20] Deleted "what—that is."
[21] Deleted "which."
[22] Deleted "elsewhere he says."
[23] Deleted ", which meant."
[24] Deleted "now but."
[25] Deleted " is not—."
[26] Deleted "so."
[27] Deleted "it—make, how shall I say? That this would make."
[28] Deleted "the most."

[29] Deleted “And therefore the question.”
[30] Deleted “This, I believe, is—and.”
[31] Deleted “He necessarily.”
[32] Deleted “via.”
[33] Deleted “you know.”

Session 10: November 7, 1962

Leo Strauss: We started from the fact that today natural right appears to be primarily a historical issue, because schools of thought now prevailing reject natural right. These schools are positivism and historicism, and I indicated the difficulties to which these schools are exposed. This creates at least the possibility of considering the issue of natural right as more than merely historical. We then turned however to a historical survey, and began from the fact that the concept of natural right emerges only on the basis of the discovery of nature in Greek thought. This discovery implied the distinction and in a way the opposition of nature and *nomos* or law, convention; and from this we can understand directly that the notion of natural law was to begin with a paradoxy rather than a matter of course. The fundamental and primary question concerned not natural law but what is by nature just or natural right. Now as for that issue, I would recommend those of you who are not familiar with it to read the speech of Glaucon at the beginning of the second book of Plato's *Republic* and the third book of Cicero's *Republic*. These are the most accessible statements about it.

The first natural right teacher whose writings we have is Plato, but Plato's doctrine of natural right has a paradoxy of its own. One can state this paradoxy very simply as follows: natural right must be diluted in order to become politically important. This view of natural right—that it is, as it were, dynamite for civil society in itself—is connected with the denial, the implicit denial by Plato of moral virtue as distinguished from the virtue of which only philosophers are capable. Aristotle admits a natural right which is in no need of any dilution, and that is connected with the fact that he admits that there is moral virtue as genuine virtue in men who are not philosophers. But on the other hand, Aristotle also teaches that while natural right is not in need of dilution, it is changeable. I would like to illustrate these points briefly by a few things which have occurred to me.

Regarding this question of the changeability of all natural right, we discussed briefly the case of theft. Now by some accident I came across another passage from Augustine, which was quoted in an article—I didn't know it—in which he discusses the question of adultery. After all, in the case of thefts, lying, even killing, one can always see considerations of the common good which might justify them—think only of the case of war, to which I referred. But the case of adultery seems to be much more difficult. Now I figured out for myself this possibility, which is of course not likely in any republican societies, even impossible, but if you think of a monarchy where the death of a king without issue would in all probability lead to a terrible civil war, say, like the War of the Roses, and the infertility of that marriage is due to a defect in the king, would a wise counselor of the royal family who would advise a woman to commit an act of adultery to guarantee the peace and safety of the realm be an immoral act? That would be, I think, a case which one would have to consider. Assuming that it has to be done even behind the back of the king because he opposes that, but the common good of the realm depends according to the best human knowledge on such a deviation from natural right. Can this not be regarded as a just action? I believe that Aristotle would say it would be.

Now the example which I found in Augustine has no reference to the public good or common good, properly speaking. He discusses the case of a wife who agreed to adultery in order to save her husband's life, and Augustine trembles to blame that wife.[i] At least he says there is no divine authority for such a decision. In other words, the case does not occur in the Bible. "*Nihil hinc in aliquam partem disputo*"—"I don't decide in either of the two directions," meaning either condemning it or regarding it in a laudable action. Now this is of course a more general principle, and that has very much to do with the question of changeability. What about actions done under duress? Is a man entitled to do anything in order to save his life?

Now the clearest discussion of this question I remember occurs in a Jewish medieval writer, Yehuda Halevi, who asserts that according to the Jewish view, in danger of life a man can do everything except three things: blasphemy or apostasy, murder, and unchastity. These are the things which are not permitted under any circumstances. But he adds a remark that this is the difference between revealed religion and the philosophers, that the philosophers do not make any exceptions.[ii] In other words, under duress a man may do even one of these three things, and I believe that this is what Aristotle has in mind: that there are always extreme cases where, surely with a view to the common good but even to a man's private good, legitimate deviations from what is ordinary natural right are permissible.

But to come back to the main trend of my argument: in Plato and Aristotle there is surely no teaching regarding natural law in contradistinction to natural right. Is there any possibility, then, of asserting a natural right which is undiluted and at the same time unchangeable? Perhaps this is the issue of natural law in contradistinction to natural right of which we have spoken hitherto. But this is only a question. The fact is that the natural law doctrine proper begins with a school which emerged after Aristotle, the Stoic school. Well, as is indicated by the very fact that no proper name is mentioned here, this is a somewhat anonymous affair, meaning the founders and the heroes of this school were not men as outstanding as Plato and Aristotle; otherwise their names would be remembered. I will not bother you with the names of the founders, because it is of no interest to us here. I would like to make only one remark, that Plato was the first founder of a school strictly understood, and Aristotle the second, and then the Stoics; and then contemporary with the Stoic school there emerged the school of Epicurus. Here the name is remembered generally. Now these two post-Aristotelian schools, the Stoic and the Epicurean, have roughly this relation: that the Stoics admit natural right and the Epicureans deny it. The influence of the Epicureans has been very great in their denial of natural right, especially when in the sixteenth, seventeenth century[1] modern natural right began, and such people like Hobbes and Rousseau, for example, all are somehow related to the Epicurean school in particular, but this I will take up later.

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[i] Augustine, *Lord's Sermon on the Mount*, 1.16.50. This passage is part of a larger discussion of adultery that begins at 1.12. See also E. L. Fortin, "Augustine and the Problem of Goodness," *University of Dayton Review* 22:3 (1994): 177-92: "The story is not without theoretical interest at least to the extent that it provided Augustine with an opportunity to discuss adultery in terms less absolute than the ones we had learned to expect from him," 184.

[ii] Yehuda ha-Levi, *The Kuzari: In Defense of the Despised Faith*, trans. N. Daniel Korobkin (Northvale, NJ: Jason Aronson Inc, 1998).

Now how do we have to understand the fact that natural law becomes a theme in Stoicism? First of all, what do the Stoics understand by natural law? They say it is the principle of all things, the natural or divine law. The natural law is a divine law. It is the right reason and identical with the reason of Zeus, i.e., the highest god. This law rules everything by prescribing what is right or good and forbidding what is wrong or bad. It is the eternal law. It is the law of the universe and it establishes the community, especially among those beings which are capable of understanding it, that is to say, all men and all gods. The universe is a big city, a cosmopolis, a city—the cosmos is a *polis*. The highest god who or whose reason is the natural law is, however, corporeal: fire or *pneuma*[iii] or ether and [. . .] as distinguished from the matter which is coeval with the ordering principle, the god. God is the corporeal soul of the cosmos. The natural law is a cosmic law which assigns to each kind of beings its right way. And an implication of that: there are things which are by nature just. The difference from the Christian teaching is obvious because, as I will discuss later, no distinction is here made between the natural law and the eternal law, and needless to say, the Christian God is not a corporeal God.

Now how are we to understand the fact that natural law became a central theme in Stoicism and not before? According to a very common view, that is simple reflection of social or political life, Alexander the Great destroyed if not the *polis* at least its significance. These were just enclaves, as it were. The cities were enclaves in the true political society; the empire of Alexander the Great, as people say, the world state. Now if you have a world state you must have a world law, and a world law cannot well be of simply human origin; and therefore you have this natural law as a law of the world state. But this is hardly tenable as an explanation. The very simple question arises: Was Alexander's empire a world state? And any look at a map, even at the map as known at that time, would show you that this was of course not a world state. I mean, India, northern Europe, Africa—[2]apart from the coastline, that was all out. Of course, not even the Roman Empire was a world state, where the same considerations also applied, and if anyone believes that this was the view of serious men, that either Alexander's empire or the Roman Empire was a world state, he only has to take the trouble of reading the sixth book of Cicero's *Republic*: the dream of Scipio, where one of the greatest Roman conquerors and generals, the younger Scipio, shows to his Roman friends what a tiny little bit of the Earth is occupied by the Roman Empire. This phrase could be used by orators flattering an emperor and this kind of thing, but no serious man in a serious speech could ever maintain it. This is to say nothing of the fact that the city as city was of course recognized by the Stoics in their political teaching.

The same consideration, differently stated: Alexander the Great surely contributed to the breakdown of the distinction between Greeks and barbarians, and this could be understood to mean that he established in fact the equality of all men. All men had the same opportunity to rise to any ruling position. But this equality of all men—meaning that the origin, the racial and other origin is of no importance—is of course not the assertion of equality simply, because that would mean that all men are in fact equal and not an inequality within each nation or race. And the Stoics have not taught that, that all men are equal simply. In addition, the basic remark that the distinction between Greeks and barbarians is conventional you find, however, clearly stated in Plato's dialogue the *Statesman*, where the distinction between barbarians and Greeks is compared to a distinction between the number ten thousand and all other numbers, meaning a

[iii] Spirit or breath.

wholly arbitrary distinction. The natural distinction among the human race which occurs first is that between men and women, as is made clear in the context.

The Stoics do deny that any man can be by nature a slave. But then I ask: Which philosopher except Aristotle asserted that there are natural slaves? So this is not a peculiarity of the Stoics. But there is a passage which is adduced in the literature in order to show that the Stoics admitted—the whole Stoic teaching is based on the assertion of the equality of all men. We have [3]some evidence showing that there were some Greek thinkers who asserted the natural equality of all men. The clearest and most emphatic statement occurs in the fragment of the sophist Antiphon, which I read to you some time ago.[iv] Now let us first consider this passage for a moment, in Antiphon. How does he prove it? That all men breathe equally and have the need for food and this kind of thing, and hence all men are by nature equal. Now if Antiphon regarded this as a proof of natural equality he must have been a very poor thinker, because this kind of equality, let us say the equality of digestion, is politically absolutely irrelevant. The question is whether men are equal or unequal by nature in regard to those qualities which are politically important, and the merely bodily equality in a rough way is of course of no political importance. But for given purposes, for certain purposes it's very important, naturally, and therefore we are not surprised to find that the doctrine of natural equality occurs, for example, in a number of Roman law texts, from which it has migrated into the Western tradition in general. But this is one thing, this half-popular tradition, and another thing is what philosophers as philosophers teach who are supposed to have given it some thought. And we must see when this doctrine of natural equality comes to the fore in the seventeenth century; we must see what its premises are.

Now we turn to this passage in Cicero's *Laws*, book 1, paragraph 30:

"[I]f bad habits and false beliefs did not twist the weaker minds and turn them in whatever direction they are inclined, no one would be so like his own self as all men would be like all others. [In other words, all unlikeness is due to error, to opinion, to prejudice, and so on. It is not natural—LS] Therefore, whatever is the definition of man, it applies equally to all. This is the sufficient proof that there is no difference in kind between man and man [now this of course was admitted by every man, by every philosopher, that all human beings have the essential character of man; otherwise they couldn't be called men—LS], for if there were such differences in kind between man and man, one definition could not be applicable to all men; and indeed reason, which alone raises us above the level of the beasts, enables us to draw inferences to prove and disprove; to discuss and solve problems and to come to conclusions is certainly common to us all and though varying in what it learns at least in the capacity to learn it is equal. [All men can learn equally although not all men do in fact learn equally—LS] For the same things are invariably perceived by the senses, and those things which stimulate the senses stimulate them in the same way in all men. And so the rudimentary beginnings of intelligence to which I have referred, which are imprinted on our minds, are imprinted on all men's minds alike; and speech, the mind's interpreter, though differing in the choice of words, agrees in the sentiments expressed. In fact, there is no human being of any race who, if he finds a guide, cannot attain to virtue."[v]

[iv] See session 6.

[v] Cicero, *Laws*, 1.10.30. The translation is nearly identical to the one by Clinton Walker Keyes in the Loeb Edition (Cambridge, MA: Harvard University Press, 1928), but there are small deviations in Strauss's reading.

Now this is taken to be a statement of men's equality regarding the intellectual capacities. Now I can only make one point: there are so many other passages in Cicero which contradict it. Here I can only say this, that the context shows the following thing. Read it in paragraph 25 there: the same virtue exists in men and God but in no other genus besides. Virtue, however, is nothing but nature perfected and developed to its peak. Therefore, there is a likeness between man and God. In other words, on the same ground on which a seeming equality of all men is asserted there is also asserted a seeming equality of men and gods, which Cicero can hardly have meant. There is an identity of the essence but a gradation within the essence. This is the only way, I think, in which we can understand Cicero's teaching. Now if this is then not peculiar to the Stoics, either the rejection of the *polis* in favor of the world state or egalitarianism of some kind, what is the peculiarity?

Now we must not forget what you cannot know, and so I should have stated it earlier: no writings of the Stoics have come down to us, only fragments. Those Stoics of whom we have writings, like Seneca and Marcus Aurelius and Epictetus, are much later, much later—Seneca was a teacher of Nero, for example. And so we have to remain with fragments. The coherent exposition of the Stoic ethics, the most accessible, you find in Cicero's book on the ends of good and bad things, *De Finibus*, book 3. There is no mention there, incidentally, of natural law; and the reason, as one can gather from fragments, is this: natural law is for the Stoics the theme not of ethics or politics but of what they called physics, which is the doctrine of the whole and includes also the doctrine of the gods. Now the specific Stoic teaching peculiar to that school is that virtue is the only good. Virtue is sufficient for happiness. The happy life is identical with the life of decency [. . . .] Now this contradicts first the Epicureans, obviously, because for them the happy life is the pleasant life; but it contradicts also Plato and Aristotle because it asserts that equipment, as Aristotle calls it, meaning some external goods, and some degree of luck, *tychē*, is necessary for what we ordinarily understand by happiness.

So man is perfectly self-sufficient to make himself happy. But unfortunately there can be terrible fates, like the fate of Priam, this decent man whose fate you know from Homer, and where Aristotle himself says, I can't give an answer. He, of course, did not cease to be a gentleman and a very virtuous man, but one cannot say that his life is a model of happiness. And the Stoics draw this solution: Well, if the suffering and the misery is too great, you can always commit suicide. So the admission of the legitimacy of suicide is an indispensable element of the Stoic teaching that virtue is self-sufficient. The position described in Cicero's book 3 is fundamentally the same as that sketched in Plato's *Gorgias*, without the myth at the end; and hence, considering the relation between the *Gorgias* and the *Republic* of which I have spoken before, it is a rather simplistic view.

But what is that Stoic virtue? It is not moral virtue in Aristotle's sense. In the fragments there is no mention of moral virtue as such. Stoic virtue is inseparable from theoretical wisdom. In this respect, they agree with Plato: only the philosopher can be virtuous. On the other hand, and that seems to be the most striking difference from Plato, philosophy is as it were demanded from everyone. Philosophy is treated as if it were moral virtue, which can be legitimately demanded from everyone. Moral virtue can and must be understood as commanded to all men, which cannot be said of philosophizing.

Student: How do you say that differs from Plato?

LS: That the Stoics present philosophy as, as it were, demanded from all men, whereas Plato says only few men are by nature able and therefore it cannot be universally demanded. When Aristotle speaks in the fifth book of the *Ethics* of justice, and more particularly of what he calls general justice, he says that the whole of virtue is in a way demanded by the law of the city. Now we can enlarge that, and then we arrive at the Stoic view. The highest perfection of man is demanded from all men, and this requires a law which is not merely the law of the *polis* but the law of the *cosmos*, the natural law.

Now this much about the Stoics in general, and I would like now to turn to the most important documents of the Stoic natural law teaching which we have in some completeness, and they occur in Cicero, in Cicero's *Laws*, book 1, and in the *Republic*, Cicero's *Republic*, book 3. I begin with the *Laws*, because in the *Laws* Cicero speaks in his own name, whereas in the *Republic* he does not do so. Cicero's *Laws* are a sequel to his *Republic* just as in a way the Platonic *Laws* are a sequel to Plato's *Republic*. But Cicero understands it somewhat differently, namely, that every law or body of laws is relative to a regime. Now his *Republic* presented the best regime, say, the Roman, the Roman republic; and the *Laws*, his book the *Laws*, are meant to present the best laws, i.e., the Roman laws as fitting the Roman regime. Cicero is the chief speaker and the others are his brother Clintus, a Stoic, and his friend Atticus, an Epicurean. Cicero himself is an Academic, but he however sets forth the Stoic doctrine.

Now I explain this briefly. We had these four schools: Plato, Aristotle, Stoa, Epicurus. Plato's school was called the Academy [4][based on its] location, just as Aristotle's school was called the Lycaeum and the Peripatetic for some other reason. So now the Academy, and the Academy had a very complicated fate. It became [established] very shortly after Plato extremely skeptical, and the most famous name, which we will hear soon, is Carneades. And so an Academician meant in Cicero's time a skeptic, a certain kind of skeptic, meaning Socratic ignorance but interpreted in a peculiar way.

Now the two others will speak about the civil law, the Roman positive law regarding the relations of citizens among themselves, and Cicero finds the subject to be of small theoretical interest. [5]He prefers the subject [of] the best laws rather than what lawyers in law schools or similar things talk about—one could say jurisprudence in contradistinction to the law proper. He prefers the subject [of] the best laws along the lines of Plato's work on the *Laws*, and the starting point must be, of course, the man's nature and not the rules laid down by the legislator. The starting point must be philosophy. The subject is universal right or universal laws; that is to say, not the right or the laws of a particular society.

In this connection I would like to mention briefly another term which has played a great role and is in a way still playing a great role, and that is the Roman expression *jus gentium*. Now the *jus gentium*, the law of the nations, is distinguished from the *jus civile*, because the *jus civile* applies only to Roman citizens. For example, if you have a marriage between a Roman citizen and a foreigner, that's not an affair of the civil law. And also, of course, commerce: commerce between Romans and non-Romans doesn't fall, cannot possibly fall, under the civil law, the *jus*

gentium. But then already in Cicero we find the identification of the *jus gentium* with the natural law. I mean, originally it was something like a positive law regarding the relations between Roman citizens and foreigners, but it could be understood to mean—it came to mean—also something like the natural law. And the basis of this identification was obvious, because natural right or natural law, [as] we have seen from Aristotle, for example, is meant to be a law which is recognized or enforced everywhere, among all the nations. The consent of the nations is a kind of sign or criterion by which one can recognize natural right according to the older view, and therefore it could also come to mean natural law. And you find a passage to this effect, for example, in Cicero's *Offices*, book 3, section 23. Later on, in the seventeenth century, *jus gentium* came to mean the law of nations in the sense of international law, where the subjects are not individuals but states. This is a very novel thing. Grotius, the famous teacher of international law, still did not call his book *Jus Gentium, Law of Nations*, but he called it *The Right of War and Peace*.[vi] So this is a relatively late development, that we use in English translation the law of nations in the meaning of international law.

Now I must read to you a passage where Cicero speaks about natural law explicitly, which is said to be the basis of all possible law.

"The most learned men have thought it good to start from law, and it would seem that they are right, if, according to their definition, law is the highest reason implanted in nature which commands what ought to be done and forbids the opposite. That same reason, when firmly fixed and fully developed in the human mind, is law. So the belief that law is prudence whose natural function is to command right conduct and forbid wrongdoing. They think that this quality has derived its name in Greek from the notion of granting to everyone his own. [Well, what he has in mind is this: the Greek word for law is *nomos*, and this can be understood to be derivative from a word, [6]*nemein*, which means to attribute or to assign. You find this etymology and its use, for example, in Plato's dialogue *Minos*—LS] For as I have attributed the notion of equity to the word law, so we have given it that of selection. So both notions properly belong to law. Now if this is correct, as it seems to be most of the time, then the origin of justice is to be found in law, for law is a power of nature. It is the mind and reason of the prudent man, the standard by which justice and legal justice are measured. But since our whole discussion has to do with the reasoning of the [7]populace it will sometimes be necessary to speak in the popular manner and give the name of law to that which in written form decrees whatever it wishes either by command or by prohibition."[vii]

The latter remark means that when we speak of laws ordinarily we use the word improperly; these are not strictly speaking laws. The laws proper are only the natural law.

Now let us consider this passage for one moment. The natural law is the highest reason inherent in nature. But this is then qualified. It becomes law—this reason becomes law only if it is confirmed and perfected in the human mind. This would mean that natural law is the same as prudence, as Cicero understands the word prudence, namely, in the Aristotelian sense. Prudence is not cleverness. Completed in the mind of the wise man, it is the natural law. [8]Since prudence has also to do with ordering the affairs between men, prudence necessarily leads also to justice in

[vi] Hugo Grotius, *The Rights of War and Peace* (1625).
[vii] Cicero, *Laws*, 1.6.18-19. Strauss's translation.

particular, i.e., to give to each what belongs to him, and it is further implied that unjust laws—and even explicitly stated—are not laws. But Cicero also uses the word "natural law" of the reason of the highest god which rules the universe. The divine mind itself is the highest law. Now what does this imply, this view of natural law imply? First, man is by nature the rational animal, as is here indicated. The perfection of reason is virtue. So man is by nature directed or ordered toward virtue, because the perfection of his specific difference, reason, is virtue. And secondly, this means man is by nature social. Man is by nature social, and therefore the completion, the perfection of his sociality, i.e., justice, is something toward which his nature tends. Now what does this mean in a way which is intelligible to those of you who have never heard of that?

I read to you a passage from the third book of the *Laws*, section 43. "If nature is not to be considered the foundation of justice, that will mean the destruction of the virtues on which human society depends. For where, then, will there be a place for generosity or patriotism or loyalty or the inclination to be of service to others or to show gratitude for favors received? For these virtues originate in our natural inclination to love our fellow men and this is the foundation of justice."[viii] In other words, we have a natural inclination to love our fellow men, and since this inclination is natural, surely its full perfection will be according to nature. Now this is very hard for us to understand, and since I do not wish merely to repeat some dogmas which might merely sound strange we must—I think this is a good point for seeing what this means, because could one not say that we don't see much of this natural inclination of men to love their fellows? Is this not a fairly obvious objection to Cicero?

Let me first read to you a passage from someone who almost explicitly takes issue with Cicero on this point. This is Hobbes, in his book *On the Citizen*, chapter one, end of the second paragraph, after a long argument: "It must then be stated that the origin of great and lasting societies consists not in men's mutual benevolence but in their mutual fear."[ix] And Hobbes gives a long argument in this section in which he shows the great lack of benevolence which men show. And if I remember well, he gives also this example—well, he was of course accused to be a misanthropic man because he said men don't love each other—and then he said, "Well, look around: Why do fathers lock their money in money chests? I mean, even if there are no servants in the house. I mean, if they don't trust their own children do I teach them to do so? I merely state [. . .][x] that it is so." In other words, there is so much, there is much benevolence among men but there is also so much of hatred among men. Why should the one be more natural than the other? That is, I think, an argument which would come very much at the present time and plays a very great role especially in the seventeenth century. Now first this gentleman.

Student: What are the references in Cicero? You read two quotations—

LS: The second was the thesis about natural benevolence, that men love each other naturally: *Laws*, book 1, section 43. That's all. That's simple. And Mr. Megati. Pardon? No, first Mr. Megati. Then you—it's your turn. Oh, you were before—you raised your finger—

[viii] *Laws*, 1.15.43.
[ix] *De Cive* 2.1.
[x] The transcript has a blank space here.

Student: [. . .]

LS: Oh, first was in *Laws*, book 1, paragraphs 18 to 19. Mr. Megati?

Student: I got confused about something you said . . . You talked about Cicero and the natural law and you said something about it had to be completed by human reason . . .

LS: Yes, there is something—that was correct. It must be completed in the mind of man, and more particularly in the mind of the wise man.

Same Student: I was under the impression that the law was—and here is the difficulty—that the law was a transcendent, unchangeable standard.

LS: Yes, but what does this mean? I mean, the law is that law by which the ordering principle, the highest god as Cicero says, orders the whole and assigns limits to everything. Yes? I mean, heavy bodies cannot—bodies cannot do what the mind can do, and things have their characters. There are always limits to things. Think only of the difference between dogs and cats and then you will see what it means. And now, in the case of man there are certain limits set to him, things which he cannot possibly do, but he has a very great range, a much greater range than any other animal,[9] but man has some direction by nature and these are his natural inclinations. But to perfect these inclinations is left to man. In other words, man does not grow virtuous as a puppy grows into an adult dog. He has to build himself up as a virtuous man. Now this implies that he has also to make clear to himself what the natural inclinations are and what their perfection is. Therefore the natural law, insofar as it applies to man, must be perfected in the human mind. This is, I think, what he means. For example, if—let us assume that—[10]

Same Student: I misunderstood you.

LS: Yes. No, let us assume that we all love each other, are benevolent to each other. Now this of course is—you cannot possibly leave it at that, because that can go together with the greatest folly and therefore some discerning is necessary. Which act of benevolence is the right one to this man and the right one to another man, and so on? This discerning—[the] sake, [the matter] of reason and this perfection of the natural inclination and of the natural reason is man's own work, but in perfecting it he follows nature's guidance. That is meant by that. It's now clear? Good. Now was there—yes?

Student: Assuming Cicero's concepts of the necessary perfection of reason in order to achieve natural law, does he mean by this a strictly philosophical perfection, as would Plato, or does he mean a relatively simple grasp of moral principles?

LS: Yes. Well, this I would say he implies, but the full understanding of duties, let me say, would be a matter for the wise man, not for every man. I mean, he would assume some awareness of it in all men. I believe there is no difference between Thomas Aquinas and Cicero in this particular point, because there it is also left to man to deduce the conclusions from the natural law, in Thomas. Yes? There's no difference.

Student: I lost the connection—the contradiction between Cicero saying it is natural for man to love each other and yet the father to lock up his chest on his children.

LS: That's Hobbes's objection.

Same Student: What did you say?

LS: That is Hobbes's objection to Cicero and shows how little benevolent we are—I mean, also either how nasty that father or how nasty are his children or both. Pardon?

Same Student: But Cicero must have been aware of that too.

LS: Sure. Exactly. In other words—I mean, everyone who is not a babe in the woods knows the facts of human malice, and Cicero—who surely had quite a bit of intercourse with that malice, as is shown by Catalina and other individuals—must have known it. Now what then does it mean? Now let us take Hobbes's analysis as a starting point. Hobbes can be said to say, although he doesn't explicitly say [it], that man, so far from being benevolent to his fellow men, is a natural enemy of his fellow men. Man is by nature nasty. Yes, but what does that mean? What is that fundamental malice in man? Now Hobbes analyzes it and finds then something, the following root: that man is concerned with his self-interest. In other words, that everyone is more concerned, generally speaking, with satisfying his hunger than the hunger of someone else or with getting rid of his toothache than with getting rid of another man's toothache. That Hobbes doesn't think is in any way bad; that's natural. But there is something else which is really wicked in man and that he calls, with a biblical expression, pride. Men do not want merely to have what they need, and even perhaps in case of conflict to have it over the protest of others, but they want to be superior to the others. They want to be recognized as superior to the others, and that hurts them, naturally. You know? [11]That you want to satisfy your hunger and the other fellow wants to satisfy his hunger does not essentially lead to conflict. It may lead to conflict when there is great scarcity, but not necessarily. But if everyone wants to be superior to the other, this necessarily leads to conflict. I mean, A wants to boss B, and B wants to boss A, and that means war. So, pride.

But what is pride, then? Now pride means concern with the opinion of others. Pride is a social passion. The antisociality doesn't do away with the fact that it is based on a fundamental sociality, a fundamental concern with the others. So deep, in other words, is the sociality of man that even his worst vices are constituted by sociality. This is one point. Now take another example which I have heard frequently said. For example, when people speak of the malice of men, which is indeed very great; for example, what the Nazis did to the Jews. And some people say they treated the Jews like beasts. That's not exact. No one treats a beast that way. [12]I mean, if someone is cruel to a beast, ordinarily meaning callous, and doesn't care whether the horse suffers from a whip or not, this is something entirely different. The concern was here with humiliating the Jews; and no one who maltreats a beast, unless he is somewhat mad, wishes to humiliate that dog or horse or whatever he deals with. But this means, of course—that is the same thing which Hobbes has in mind—the concern, a passionate concern with the others, a perverted passionate concern. But a perverted passionate concern always presupposes as its foundation something nonperverted, so that one could say even the most striking facts of man's

inhumanity to man point to a passionate concern of man with his fellow men. Surely that does not solve all difficulties, but these are the things which Hobbes simply did not properly consider and which are surely considered[13] by Cicero. [14]By the way, I stated to you already the implicit reasoning of Cicero: that a perverted sociality, what we ordinarily call antisocial—these juvenile delinquents are not asocial, they are antisocial. They are very much social. Their concern with status symbols, of which I read, is a sign of their sociality, of course. I mean, status symbol means, of course, to be concerned with the preferences obtaining in this particular society. Yes? A Cadillac, I have been told, is a status symbol, and some form of beard can be a status symbol at the University of Chicago, I have been told, and these other things. But this is all social, radically social. Asocial would mean absolutely indifferent to others, absolutely indifferent to others; and [15]I don't know whether that's humanly possible, but as Aristotle says, this is possible only for brutes and for gods, surely not for a human being, for an ordinary human being. So, to repeat, man is radically social, and what we understand by antisocial—and quite rightly—is only a perverted sociality which as perverted sociality points to a normal, natural, healthy sociality, and that is a positive concern with one's fellow men. Yes?

Student: [. . .]

LS: You mean—yes, but one could say this. In a wider sense of the word you can of course say everything which men do is natural but that is not [helpful].[xi] Then you can say cancer is also a natural phenomenon, and yet when we make a distinction between a healthy man and a man who suffers from cancer we do not impute [to] the human body a merely subjective distinction between a healthy body, which we like, and cancer, which we do not like. We imply that a disease is a disordered state of the body—disordered, i.e., the natural order of the body is [disturbed].[xii] And the same would apply to the health of the soul, because that is the way in which all the earlier thinkers understood virtue—I mean not all, but these of whom we are speaking now. There is an orderly state of the soul where it can perform its functions, and a disordered one in which it cannot do that [16][which is vice]. For example, one function of man is to think, especially to think about his affairs, how to order his life toward that kind of happiness which we can reasonably expect. Now if someone is unable to resist the temptation of alcohol or of the gambling table, then there is something wrong with him. There is a certain disorder there. I mean, what does it mean that we have a discipline called psychiatry? I mean, commonsensically speaking it means that we make a distinction between a sound and an unsound mind, and this distinction is not meant to be based on our likings or dislikings, but on what they call an objective difference. So the mind is naturally able to become unsound. To that extent, unsoundness is natural, but it has at the same time in itself a tendency toward soundness. This is meant by this distinction. Yes?

Student: [Pursues Strauss's remarks regarding perverted sociality][xiii]

LS: Yes, then one would have to go more deeply into these things, and one would have to go into the phenomenon especially of hatred, yes? What does hatred do to a man, in contradistinction to benevolence? Yes? I do not say love, because love can also mean sexual

[xi] The transcript has ellipses here, and the transcriber notes that this section of the tape is bad.
[xii] The transcript has a blank space here.
[xiii] As noted by the transcriber.

love, and we have known from the literature that some people become quite mixed up if they are in love. So—but let us take the somewhat cooler thing called friendliness or benevolence. Now look at what hatred does to a man. Does it not make him narrow, and does it not degrade him? Does he not become, against his will, a subject of him whom he hates? You know? In other words, is there not something—would a closer look at hatred not show that it is intrinsically a perversion?

Same Student: You could demonstrate that love is dangerous and damaging also.

LS: Yes, sure, not only to the others but even to the man himself, that he becomes lower, lesser, narrower, by following—by becoming a slave of these perturbations, of these perversions. I mean, surely you must not forget that this whole doctrine of virtue or of the healthy soul was not limited to these general statements. They only indicate the fundamental principles. But these dry bones had a lot of flesh around them in the modern reflections about what the various passions do to man and how they affect him. I mean, we have another example at the beginning. Today the poorest formalism conceals all these things. You know [the view that] any objective, any goal which a man puts before himself is as good as any other, and you can't say anything about it—which one can only say quite thoughtlessly. For example, when this man said in his article which I read to you: You can choose power as your goal as well as, say, intellectual clarity. You can say that easily, and the fact is undeniable that there are quite a few people who choose power as their goal. But again, one must inspect this more closely and must see what it does to a man and how we, all of us, see it as soon as we—yes, we must have some experience of life. A six-year-old child could not see that . . . I mean, the pettiness which is essential to any concern with power as power when the objectives for which power are sought are not taken into consideration. In other words, one must not leave it at a formula. One must look at the phenomenon in its fullness. This these men did, and I would say the question is ultimately—there are very important theoretical questions which—where one can very well have legitimate doubts, but—[xiv] —a man—just as we can speak of a man healthy in body, as we surely can, we can also speak of a man healthy in soul.

Now the higher we [go], the fuller we take that—that I admit, the fuller we take this notion of health of the soul, the darker things become and the simple symptom of that is if you take, for example, the view—contrast the view of a Jew or a Christian regarding the health of the soul with that of a Buddhist. There will surely be great differences, not perhaps on the level of ordinary conduct—there is not such a difference—but when it comes into the higher reaches, and there there is surely great darkness and that no one can deny. But there is a great difference, as I said on a former occasion, whether you cannot settle the question, say, between Buddhism and Christianity or whether you cannot settle the question, say, between Lincoln and a low-class ward heeler, whatever you may think of the wisdom of each action of Lincoln. And I think the question, the latter question, is settled easily by every man and woman of ordinary common sense. And our social science, however, the general ideology now, treats the two cases as equal, and this, I think, leads to a very great impoverishment. If the social scientist wisely stops and refrains from answering questions which are of immense complexity, that is one thing, but if he stops at difficulties which are not difficulties, then he cannot be regarded as a wise man. Yes?

[xiv] The tape was changed at this point.

Student: You use an appeal to common sense, then, as the basic objective realm for distinction between healthy conduct and unhealthy conduct?

LS: What does common sense mean?

Same Student: I was under the impression that there would necessarily be an objective standard for making this distinction and it seems that this is common sense or the opinions of what are the standards.[xv]

LS: Yes, [17]well, what would we mean by common sense is the use of reason to the extent to which we all use it in daily life. In other words, common sense does not mean—is not simply an appeal to opinion. [18]And when I say this, I say: Look at what you yourself are doing when you say this fellow is mad or [19]that something is wrong with him. Surely you may make mistakes. He may simply be different from you, and without the necessary experience you may think that someone who acts differently from you acts unreasonably. That is of course unreasonable, to judge on this basis. But for this reason, we need experience. We must have seen all kinds of men to see that not everything which differs from our ways is necessarily wrong or foolish. But I say every one among you, I believe, must have had the experience to which I appeal: that we cannot live without making these distinctions. That they are, as we ordinarily make them, not exact and in many respects too rash and all this kind of thing I of course grant, but on the other hand we cannot simply say [that] because it doesn't have the lucidity of Euclid, therefore it has no grain of truth in it. That is indefensible. Yes?

Same Student: But if it is not rigorously logical it does give way to a variety of interpretations . . .

LS: But that is—no, I mean, "a variety of interpretation," what does this mean? Ultimately it would mean there is a variety of notions of human nature—yes?—which are equally good. For example, the notion that the higher life of man, the moral–intellectual life of man, is a mere derivative from the satisfaction of his sensual needs—food, sex, and so on—that is one thing. Surely we have that. Freud and his followers do exactly that, and in a way also Marxism. [20]I mean, all kinds of things are done and [are] to that extent possible, but the question is whether they are reasonably done. At any rate, [21]I must leave it at this point now to indicate at least that what Cicero says is based on broad reflections and cannot be simply dismissed by reference to the fact that there are so many men who act malevolently toward one another. So these are the first two premises: man is by nature rational and man is by nature the social animal.

The third is the noble or just things are to be done for their own sake, not for the sake of pleasure, utility, or reputation. [22]Many people would say: Of course the noble and just things must be done because they are eminently useful and they provide, perhaps, pleasure. And they are surely very useful for reputation; I mean, a man who is generally known to suffer from all vices, from *all* vices, is generally shunned. [23]In other words, if the striving for the noble and just things is understood as merely in the service of something else and not for its own sake, then this is not compatible with what Cicero has in mind. And the reason is this. If the just and noble were pursued for the sake of something else, then the pursuit of it [24][would be] based entirely on

[xv] The transcriber notes: "Uncertain of the last five words."

calculation, on calculation—it pays to do that—and it would not be based on nature itself. So that the key implication of Cicero's teaching is that there is a natural inclination in man, perverted in various ways, for the noble and just as such.

The fourth point which we observe in reading Cicero—you might read paragraphs 40, following: the unjust are unhappy. What he has in mind is the bad conscience. And the fifth and last I mention here is: only the philosophers can be virtuous and just.

I illustrate Cicero's teaching by a few quotations—I mean, because [25]without examples these reflections are of no use. He speaks here of the laws regarding burial: "The rule that ownership of the entrance court of a tomb or of the mound may not be acquired by possession protects the special privileges of grace. These are the rules which we find in the Twelve Tables [the oldest document of Roman law—LS] and they are certainly in agreement with nature, which is the standard of law."[xvi] Now what does this mean? How can we understand that? That a certain protection of grace, something very special, should be [provided]—that's one of the few occasions where Cicero refers to natural law when speaking of particular Roman laws. Now what does he mean? In a later passage, paragraph 67, he refers to Plato, what he says about funerals: "He forbids any piece of land which is in cultivation or capable of cultivation to be used for a grave, but provides that the greatest possible use should be made of the sort of land which can receive the bodies of the dead without injury to the living."[xvii] Now Plato clearly takes an entirely different view. Plato says there must be regulations that the graves do not interfere in any way with the needs of the living. So this would seem to mean that—I mean that ultimately it is not the Roman law, but what Plato pronounces about the graves is more reasonable. This is one example, and another example we find at the beginning of book 3 of the *Laws*. Let me see whether I find it. "Nothing is so completely in accordance with the right and the condition of nature and when I use this expression I wish you to understand that I mean law as its government, without which life is impossible for households, the city, the nation, the human race, nature of things, and the universe. For the universe obeys gods; seas and lands obey the universe, and human life is subject to the decrees of the supreme law."[xviii] In other words, here the phenomenon of rule, of government, is declared to be natural, i.e., not to be based merely on human relations.

Now all these points which I have mentioned, these five points which are implied in Cicero's teaching, we find already in Plato and Aristotle, but there is no natural law in Plato and Aristotle. We still have not yet answered the question: What is the specific premise of the Stoics which we do not find in Plato and Aristotle? And to this question one can give only, I think—I see only one answer, and this is the Stoic teaching regarding providence. The natural law, as the Stoics understand it, is fundamentally a providential order. Now why is this necessary for natural law? Because the natural law must have sanctions or there must be punishment for the unjust? In a way, yes. There must be some sanction. The misery accompanying injustice is the sanction for natural law, and this, I believe, was the empirical question which was always in the center of discussion, namely: Are the criminals, the unjust, unhappy? Are they tormented by their conscience or are they not? And [it is] of course a question which is impossible to decide

[xvi] Cicero, *Laws*, 2.24.61-62. Presumably Strauss's translation.
[xvii] *Laws*, 2. 27.67. Presumably Strauss's translation.
[xviii] *Laws,* 3.1.3. Presumably Strauss's translation.

empirically, because if you find thousands of repenting criminals you cannot possibly know the other thousand of whom no one knows, because they keep it close and hidden in their [hearts],[xix] what is going on there. To this one can make this objection: we find an explicit teaching of providence in Plato, and especially in the tenth book of his *Laws* he gives what is claimed to be a demonstration of divine providence, and divine punitive justice in particular. This is a very long question. The fact is undoubtedly [true], but we must also say there is also conflicting evidence in Plato. For example, in the dialogue the *Statesman*, the Eleatic Stranger, the speaker there, presents a myth which is meant to indicate the fundamental political problem, and according to that myth the universe has two stages which recur infinitely often. In one stage the gods rule. In the next stage the gods do not rule, and only in that second stage where there is no providence is it necessary for men to take care of their affairs, i.e., is politics, human government, necessary.

As for Aristotle, I remind you of a single statement: when he speaks in his work on the soul of an earlier Greek philosopher who said intelligence, cosmic intelligence, rules everything, rules, [*kratē*], Aristotle says [*gnorizē*], i.e., he knows, he thinks.[xx] There is not properly rule, but by being what it is—that is, after all, also the Aristotelian teaching itself—by being what it is, the god as the unmoved mover, without issuing commands or laws of any kind, he acts as an attraction, as it were, to all other beings to very different degrees, but there is no care for them, no reward or punishment inflicted on them. Natural law seems to be connected and to derive [from]—to be based on the view that there is a legislating god. This notion is not implied in the doctrine of natural right as presented especially by Aristotle.

I turn now to Cicero's *Republic*, which is—Cicero's *Republic*[26]—had disappeared for many centuries from classical antiquity on and it was recovered only about a hundred forty years ago in a Vatican manuscript. So whereas the *Laws* were known throughout the Western tradition and could therefore be used, the *Republic* was wholly unknown and could not affect the tradition—except quite a few quotations in Augustine and other authors, but otherwise it was unknown. Now what is, then, the teaching of the *Republic*? Before I turn to that I would like first to find out whether there is any point you would like to discuss—before I turn to the *Republic*, because in the *Republic* the same teaching is also presented in the third book, but from a different point of view. Yes?

Student: I just want to clarify how Cicero's teaching differed from the Stoic teaching.

LS: Yes, that is exactly the question to which I would like to lead up. This becomes clear not from the *Laws* but from the *Republic* and, in a way, I gave the answer already before. Being an Academic, i.e., not a Stoic, he cannot have exactly the Stoic natural law teaching except—I mean there is a crude, practically sound statement but not as theoretically tenable. And the proof is very simple—I may mention this right away. Cicero wrote a book called *On the Nature of the Gods*, in which the Stoic teaching regarding providence is presented first and then criticized by the highest priest of pagan Rome, the *pontifex maximus*. And Cicero, of course, also fulfilled certain religious functions—you know, civic religious functions, we can say, and this was

[xix] The transcript has a blank space here.
[xx] A reference to Aristotle's treatment of Anaxagoras in *De Anima*. The line in question is 429a19. However, Aristotle uses *gnorizē*, not *noei* as Strauss seems to have originally been transcribed as saying, for "know." See also *De Anima,* 404-405.

[necessary], but Cicero criticizes that. I mean, *On the Nature of Gods* ends with, culminates in a refutation of the Stoic doctrine, and the Stoic doctrine regarding providence was connected with the doctrine regarding divination. Cicero wrote also a special treatise on divination, [a] dialogue, and where his brother Clintus, the Stoic, presents the Stoic teaching regarding divination, and [where] Cicero himself in the second book refutes the doctrine of divination. So I think Cicero was not a Stoic but he regarded certain Stoic doctrines as practically sound. That is all one can say. He himself was not, surely not, a Stoic.

Student: He preferred it to Epicureanism.

LS: Yes, sure. On very healthy political grounds he felt that the Epicurean doctrine with its emphasis on pleasure, and especially on private pleasure, was not good for having, for producing good Roman citizens. And finally, in a way in his *Laws* [it] is that the Epicurean Atticus is presented as agreeing to the Stoic teaching regarding natural law and providence, and of course Atticus did not agree to it in his capacity as an Epicurean but in his capacity as a public-spirited Roman citizen. These are two different considerations, you know? By the way, Cicero's book *On the Nature of Gods* became the model for Hume's *Dialogues on Natural Religion*, where we find a comparable difficulty. Now there was—oh, Mr. Butterworth.

Mr. Butterworth: [Seems to have understood some part of Cicero's writing as saying that justice was no more than positive right.][xxi]

LS: No, Cicero did not say that. No, I do not know. In other words, justice is one of the four cardinal virtues, and since what justice in particular prescribes is the right in the specific sense, therefore right, natural right, is a part of what is dictated by natural law.

Mr. Butterworth: But if all law, positive laws, are relative to regimes—

LS: Yes, but this according to that teaching [27]would have to be qualified. One way of qualifying it is this: that all laws are relative to the regime, let us say—which is of course not literally true. I mean, you can see how much of a previous body of laws survives even after very great and violent changes of regimes, but in a rough sense it may be true. Then the question recurs regarding the regimes: Which regimes are better, or which regime is just and so? You know? So in other words, the specific things—when Cicero has equivalents to the two goats or one sheep which we read in Aristotle, this is of course merely positive. But when it is the general question of worshiping the gods in a very general way, this is of course meant to be natural law, but specific Roman institutions. For example, that you have an institution of virgins, the Vestal Virgins, with special functions, that's clearly positive Roman law; and [28]the relation to natural law [29]or [to] natural right is only that it does not contradict natural right, whereas other institutions, for example, say, certain immoral oriental cults with all kinds of promiscuity, that would be another matter. That would not be tolerated from this point of view.

Mr. Butterworth: And then we could bring Cicero to say this, that it could not be tolerated?

[xxi] As noted by the transcriber.

LS: Well, I do not remember a case—I mean, as I say, references—when he speaks—. The book, after all, deals with Roman laws, or with rewritten Roman laws; Cicero changes them so that they fit the best, [so] that they are really good laws. Now these laws are not claimed to be dictates of natural law, but since natural law is the basis, you have of course to wonder all the time, what of that is natural and what is positive? The explicit references to natural law were only the two which I mentioned—you know, regarding grace and regarding the fact of government, [that] government is according to natural right—not more. And here you have to use your own judgment. Yes?

Student: [. . .]

LS: Well, the emphasis is what we would call the pangs of conscience. Well, in the Greek the Furies, the Furies pursuing Orestes.

Same Student: That's hardly this life. Do they believe in the immortality of the soul?

LS: Yes, that was surely implied, but [30]it is not explicitly mentioned in this context, but the point is that the unjust man cannot be happy, cannot have peace of mind. That is the assertion, and that of course—I mean, this is a very long question, to what extent this is universally true. You know, empirical evidence often cannot be available—can't in the nature of the case.

Well, I will only say a few words about Cicero's *Republic*, which is the basis of the *Laws*. This is a dialogue about the best regime. And it is—Cicero fictitiously presents that discussion as having taken place about eighty years before his time, say, shortly after the destruction of Carthage; and Scipio the Younger, Scipio Africanus, is the chief speaker. But the work is divided in this way: that they raise first the question of what is the best regime, and this question is answered by Scipio in a fundamentally un-Stoic manner, but which doesn't mean that it's anti-Stoic. It could be as well Platonic or Aristotelian. And then the question of right or justice comes up in this context: Can you have a great flourishing commonwealth without committing acts of injustice? Now this takes on special sharpness for the following reason: Scipio asserts that the best polity that ever was is the Roman polity, which meant the Roman Empire. And so for all practical purposes it means: Did the Romans become so great merely by being of signal justice, or were they not compelled to do some gross acts of injustice to become the imperial nations? This is the theme of the *Republic*.

Now in book 3, not Scipio but a lesser man, the oldest man present, Lelius, has a discussion with another man called Philus about this question of justice: Is justice by nature or is it merely by convention? Lelius says it is by nature, and Philus [that] it is by convention; and therefore we have a discussion fundamentally like that between Glaucon, Socrates and Thraysmachus,[xxii] and Socrates and Callicles in the *Gorgias*, but more detailed. More detailed [31]because here the political question—the question of foreign policy, as we would say—is fully present all the time. And here we have this famous case which in this form never occurs in Plato and Aristotle. Are there not cases which show the breakdown of justice, the limits of justice and in a way the breakdown? And this is the famous case of the two men, shipwrecked men on a raft, where who can decide what's right and wrong if one pushes the other into the sea? You know? In other

[xxii] In Plato's *Republic*, book 1.

words, justice is possible only within a limited sphere. Within a limited sphere. In the really tough cases it is not possible. Does this not show that justice owes its power entirely to human arrangements, that you have government and so on and so on? This is roughly the problem discussed. And this has a great later history because this case of the two men on the raft, where you are compelled or where you seem to be compelled, where you *seem* to be compelled to kill an innocent man—that's of course the assumption, an innocent man—merely because he stands in the way of your self-preservation without having injured you in any way, this limit case became in a way the starting point of that new type of natural law or natural right which emerged in the seventeenth century.

One can state it as follows. It is comparable to Descartes's universal doubt, the universal doubt now here specified regarding moral questions, regarding justice; and just as Descartes believed that the extreme doubt of everything leads to the absolutely indubitable, to the absolutely certain[ty] which he found in the thinking ego, Hobbes found the root of justice in the situation of the two men on the raft. [This is] because he argued as follows. Each of them is compelled to kill the other or to try to kill the other, compelled by the power of the instinct of self-preservation; therefore this instinct of self-preservation must be made the very basis of justice. [32]One can say he argued as follows: Why do you, Carneades, choose this case of the two men on the raft? Why do you not take the case of two men walking somewhere in a wood without any danger involved? Why do you do that? Because in the case in the wood it would be perfectly clear that the assailant commits an unjust act—the unprovoked assailant. But here? Here we have a case, the basic case of justice, when a man defends himself against another man and without any regard of justice or injustice involved and whether one of the two is a just or unjust man. Mere self-preservation. This need to preserve himself, this inevitable necessity as Hobbes understood it, is the basis of all right as Hobbes then developed—will show this later. The difficulty of course is this: that no one can say that there is an absolute necessity to do what the two men—or one of the two men—on the raft is supposed to do. It is possible for one of them to say: All right, you are younger, or so; let me perish. It's perfectly possible, of course. Therefore there is no genuine necessity, and that is, I think, the real weakness of Hobbes's otherwise ingenious turn-around of this question.

Now next time I will say a few more words on Cicero and then turn to what [one] can rightly call the classic natural law teaching, that developed by Thomas Aquinas.

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[1] Deleted "when."
[2] Deleted "I mean."
[3] Deleted "some evidence for."
[4] Deleted "because—from its."
[5] Deleted "and"
[6] Deleted "nomain."
[7] Deleted "populous."
[8] Deleted "this leads to—since a part"
[9] Deleted "and therefore man—."
[10] Deleted "which is of course an."
[11] Deleted "because."
[12] Deleted "The concern with—."
[13] Deleted "by man—."
[14] Deleted "Now Cicero would—"
[15] Deleted "this."

[16] Deleted “That are the vices.”
[17] Deleted “no, but no, what.”
[18] Deleted “now.”
[19] Deleted “he is.”
[20] Deleted “Surely one—.”
[21] Deleted “let me—.”
[22] Deleted “This, of course”
[23] Deleted “So this.”
[24] Deleted “were.”
[25] Deleted “only.”
[26] Deleted “was.”
[27] Deleted “could apply only.”
[28] Deleted “it is only—.”
[29] Deleted “is only that.”
[30] Deleted “also in—but.”
[31] Deleted “and.”
[32] Deleted “because he would”

Session 11: November 11, 1962

Leo Strauss: [In progress][i] —beginning at the general question, which way of life is preferable—the way of life of theory, of contemplation, or the practical or political life—and as a good Roman and great Roman he decides in favor of the practical or political life. Now in this connection there occurs the following statement about natural right. Cicero says here:

"[A]s far as our lands, houses, herds, and immense stores of silver and gold are concerned, the man who never thinks of those things or speaks of them as "goods," because he sees that the enjoyment of them is slight, their usefulness scanty, their ownership uncertain, and has noticed that the vilest of men often possess them in unmeasured abundance—how fortunate is he to be esteemed! [In other words, the man who despises the external goods—LS] For only such a man can rightly claim all things as his own, by the virtue of the right[ii] not of the Roman People, but by the right of the wise,[iii] not by any obligation of the civil law, but by the common law of Nature, which forbids that anything shall belong to any man save to him that knows how to employ and to use it . . ." [iv]

Now this is the point which we have mentioned already in connection with Plato's doctrine in the *Republic*. What is by nature right, in the sense of what is by nature belonging to a man, can only be that which is good for him, of which he makes a good use. This is the only natural right. The right according to which things belong to someone because he has acquired them legally by inheritance or purchase or whatever it may be is not a true natural right. This extreme view, which cannot be adapted to ordinary human life except via delusion, is presented here by Scipio, and he goes so far somewhat later on to say—this is in the first book, paragraph 27 and paragraph 28:

"What power . . . what office, what kingdom can be preferable to the state of one who despises all human possessions, considers them inferior to wisdom, and never meditates on any subject that is not eternal and divine [i.e., who never meditates on any practical subject, every practical subject being changeable—LS]; who believes that, though others may be called human beings only those are human beings[v] who are perfected in the arts appropriate to humanity?"[vi]

Now since all duties we have, at least in ordinary understanding of duty, are duties toward other human beings, and if the majority of "human beings" are not human beings, what happens to our duties toward them? These are all implications of Plato's *Republic*, but the remarkable thing is that in Cicero's *Republic* one of the greatest statesmen of Rome is made to repeat these most

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[i] The transcriber notes: "In Dr. Strauss's initial remarks to open the lecture, not recorded, he said he would discuss Cicero's *Republic*."
[ii] In original: "decision"
[iii] In original: "but of the wise"
[iv] Cicero, *Republic* 1.17.27. Scipio is the speaker. Strauss reads from the Loeb Classical Library edition, *Cicero XVI*, translated by Clinton Walker Keyes (Cambridge, MA: Harvard University Press, 1928).
[v] In original, where Strauss reads "human beings": "men"
[vi] Cicero, *Republic* 1.17.28-29.

daring and extreme statements of Plato. On this basis, natural right in the ordinary sense could never arise except by dilution, as I have stated before.

The primary theme of Cicero's *Republic* is the best regime. This question is answered by Scipio in the first book on the basis of two natural right principles. First, man is by nature social; and secondly, there is a natural hierarchy, a natural super- and sub-ordination of various beings, and in particular also within the human race. This is not the place to discuss Scipio's teaching regarding the best regime. It is sufficient to say that whatever the best regime may be, Scipio asserts it is actual in Rome, i.e., in the Rome of his time, which is about a hundred years before Cicero's time. From Cicero's point of view, it is already decayed.

In the second book of the *Republic* Scipio describes the origin and growth of Rome with the understanding [that he is describing] the origin and growth of the best regime that ever was. Without emphasizing it, Scipio alludes to the questionable justice of Rome. Well, he takes the old stories of Rome as literally historically correct, of course, where there is a famous murder of Remus by his brother Romulus. In other words, Rome is founded on fratricide, a favorite topic of Machiavelli later on.[vii] This is only alluded to because Scipio tries to present Rome as as just as possible, but just isn't just enough. He cannot help referring to the rape of the Sabinian women, the pillage and plunder which the Romans committed, and last but not least, the swindle committed by the Senate regarding Romulus having ascended to the heaven as a god. The thesis which Scipio maintains is [that] Rome and Rome alone reached her greatness by some natural road—by some natural road. Not only is it the best regime in its final structure, but the road at which it arrived at is natural. Now this means not planning. The ordinary notion which the Greek thinkers had is this: the best regime is an order according to nature, but this order must be established by men. It does not come into being without such human establishment. It does not come into being by a natural process of growth. Rome, on the other hand, seems to have come into being by such a natural process. Now what does this natural process mean? That is not explained by Scipio but there is one passage of the utmost importance which throws light on it, book 2, paragraph 57.

> "[A]fter a short period, in about the sixteenth year of the republic . . . an event occurred which in the nature of things was bound to happen [you see, the nature of things was bound to happen—LS]: the people, freed from the domination of kings, claimed a somewhat greater measure of rights. Such a claim may have been unreasonable, but the essential nature [or the very nature—LS] of political things[viii] often defeats reason."[ix]

This, in other words, is the character of a natural road: that sometimes the nature of political things defeats reason. In this particular case, the greater power, the greater brachial power of the multitude brought about certain arrangements in Rome. So, and since there is such an essential connection between reason and natural law, this means of course also a deviation from natural law which cannot be avoided, and this would be in perfect agreement with what Scipio said in the first book. Nevertheless, Scipio insists most strongly on the need for justice. The

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[vii] Machiavelli, *Discourses* 1.9 and 1.18.
[viii] In original: "of the commonwealth"
[ix] Cicero, *Republic* 2.33.57.

commonwealth cannot be governed without the highest degree of justice. Now this view is of course not universally admitted. In fact, it is rejected by some, and therefore one has to take up the whole question of politics and justice, [of] human life and justice, and this is done in the third book.

In the third book, not Scipio but Lelius states the case for justice, and another interlocutor called Philus, an academic like Cicero, states the case against justice. Now what is the argument? Those who deny justice start from the premise that nature is a stepmother, not a mother. She treats men badly. She treats men badly—man is in need by nature, and this need is so great that it is not possible for him always to be just. This is roughly the case against justice. The case for justice, on the other hand, is based on the view that nature is not a stepmother but a kind mother; or non-metaphorically stated, the case for justice is based on the belief in providence. Now the argument is roughly this—there is nothing particularly novel, but I have to mention it again to remind you of what the issue was in former times. The opponent of justice, i.e., of natural right, denies the existence of natural right on the well-known ground of the infinite variety of notions of right which prevailed. That's a very popular argument in classical antiquity as well as in our own time. This is not sufficient, because one sees if one looks a bit more closely that there is a certain common core of what men understand everywhere by justice. Justice has, in other words, a very definite meaning; and what the opponent of natural right, Philus, does is exactly to question that. I read to you a statement of Philus to make this clear. Well, I read it first and then explain it.

> "Wisdom urges us to increase our resources, to multiply our wealth, to extend our boundaries; for what is the meaning of those words of praise inscribed on the monuments of our greatest generals, "He extended the boundaries of the empire," except that an addition was made out of the territory of others? Wisdom urges us also to rule over as many subjects as possible, to enjoy pleasures, to become rich, to be rulers and masters . . . [this is what wisdom or prudence says—LS]; justice, on the other hand, instructs us to spare all men, to consider the interests of the whole human race, to give everyone his due, and not to touch sacred or public property, or that which belongs to others."[x]

So this meaning of justice is fundamentally the same everywhere. The just man is a man who gives everyone his due, who so far from harming others helps them as much as possible, and so on. So this is the question then: Is justice thus understood, as it is understood more or less clearly in all ordinary notions of justice, is justice thus understood good or bad? The variety of notions of justice is not the fundamental issue.

Differently stated, that without some degree of justice no society can last is obvious and thus has been known all the time, at least since Plato's time, by the example of the band of robbers which cannot last if they do not have a reasonable degree of commutative and even distributive justice among them. And so what is true of a gang of robbers is of course true also of civil society. But the question is this: Is the civil society essentially different from a gang of robbers? For it is, after all, possible that a civil society—a nation, however you call it—might act on these principles of justice among its members but not be bound by any consideration of justice toward any outsiders. This would be exactly that parallel. In other words, the admission that justice has

[x] Cicero, *Republic* 3.15.24.

some genuine meaning and justice is necessary is perfectly compatible with a denying of the natural character of justice. Do you see that? I mean because no one would assert that the gang of robbers acts on any principles of justice; it is simply shrewd calculation. How can Al Capone keep his boys together unless he satisfies them so that they have no reasonable complaint? So he must exercise his authority in a certain manner. I mean, of course he can shoot any traitor, that goes without saying, [just] as civil society does. But he must *be* a traitor; he must not merely be accused of being a traitor. Also a sound principle in a law. And so on. This is elementary, and everyone admits that. But the question is: What about the society itself, as a whole in its relations to other societies? That is the practical meaning of the question of whether there is natural right or not.

Now one can avoid the statement of this form as follows, a Plato has tried to do in the *Republic*. Is there no other [criterion][1] for distinguishing between the city and the gang of robbers except the conduct toward outsiders? Now let us use our experience, and we all have very great experience with criminals, as you know from the daily papers and other sources of information, if not, unfortunately, more direct forms. What do the criminals do after they have gotten their loot? What do they do with it? What is the end for which they commit their crimes? Now you surely know that they gorge themselves with all kinds of food and drink, and there are also so-called dolls—[they] are absolutely indispensable, but that is all. [2]All [of] what they do serves the purpose of a life of intemperance, to understate it. But a civil society does not necessarily do that. A civil society may be guided by principles of temperance, let us say of moderation, and that is the solution which Plato suggests in the *Republic*. If the citizen body and especially the ruling part is dedicated to moderation, then you do not need any principle of justice toward outsiders because that will flow as a matter of course. You know? There will be no obligations to other cities, but they will behave decently toward the other cities as a matter of course. But the more common view, of course, is that the city must be as much subject to a law higher than the city as the individuals are subject at least to the laws of the city.

Now the thesis of the enemies of justice, or the enemies of natural justice, is then this. By nature there exists only the useful, not the just, and the pursuit of the useful as useful is called prudence. Prudence as pursuit of the useful is good. Justice as justice is folly. To prove their case they must show that there is necessarily a conflict between the useful—the utility pursued by various cities, various states, and that of course is confirmed by Rome: How did Rome, allegedly the most noble and justest of all cities, acquire the empire? Let us see paragraph 30 of the third book. Oh, I'm very sorry, I brought the wrong text with me. Do you have—that won't help. No, let me explain what I mean. [3]The text you have here in this edition and which is the strictly Ciceronian text is the one which has been recovered in 1820, and this is fragmentary. But other parts we know through reports by Augustine and other writers who still knew the whole book, and these reports are in a way as much part of Cicero's *Republic*, of course, [4][as] the relative fragments which have been recovered such a short while ago. And to my great regret I do not have it here. I remember, however, the key point. How did Rome acquire her empire? Well, in the justest manner in the world: by defending her allies. The ally was attacked, the Romans came to their help, and then after the aggressor was defeated he ceased to be an independent power. That's it. But is this not rather hypocritical, because does conquest give the right to taking away that political freedom of the conquered nation? And all [5][these] kind of questions would arise which have to be raised. That is, Rome's empire was not established in a simply just manner.

So that of course would not necessarily affect the issue of justice. One could say: Well, that's too bad that the Romans were not perfectly just; this doesn't in any way render questionable the claims of justice. But still, it can however give rise to the question: Is the conduct of the Romans so unusual, or will we not find similar conduct in all states, so that it is not merely an accident of this or that nation or this or that period, but is the world not so ordered that men are compelled to take away from others what belongs to them? And this is the question to which I referred last time, the question of the two shipwrecked men on the raft, where you have a clear case of a quasi-necessity of taking away something which belongs to another man on no other ground except your own utility. Is this not the fundamental situation of man, which shows the essential impossibility of justice? Or differently stated, you can have justice, that goes without saying, within a limited area, but within a limited area you have also justice in the gang of robbers and therefore—this is, then, really the issue on which everything depends.

I state to you what Lelius explicitly says about the law of nature, and this is a statement which is in no way new, with what we have seen in Cicero's *Laws* and even in the Stoics before. Paragraph 33.

"True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligation by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. [We have the knowledge within ourselves—LS] And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishment . . . "[xi]

In other words, he may not be punished with a loss of property and other things, but by losing his humanity he has had the worst punishment which can happen to him. And this view of natural law, needless to say, explains also why all cities or societies, and not merely individuals, are essentially subject to a law. This law to which all cities are subject can of course not be a positive law given the absence of sufficient communication between the various states in classical times. In other words, there cannot be a positive international law; this must be fundamentally a natural law. You wanted to say something?

Student: [Asks for citation.][xii]

LS: Cicero's *Republic*, book 3, paragraph 33.

[xi] Cicero, *Republic* 3.22.33. Ellipses in original.
[xii] As noted by the transcriber.

Yes, and of course the difficulty which Lelius has—Lelius can perfectly explain in this way why it is possible to make a distinction between just and unjust laws which is the great difficulty for the opposite view, but the practical difficulty which he has as a patriotic Roman concerns the justice of Rome. I read to you two passages. "Our people, by defending their allies, have gained dominion over the whole world." So no better title, a perfectly just title. "And do we not observe that dominion has been granted by nature to everything that is best to the great advantage of what is weak?" One would have to consider closely the situation of the Roman subjects under the empire to form a good judgment of it, but let us not forget that in this Roman Empire terrible crimes were committed, the famous case of [Verres][xiii] in Sicily, and yet there was a Roman statesman, Cicero, who accused [Verres] and brought him to justice, just as Burke later on did in relation to Hastings in an exactly parallel case.[xiv]

This is all I have to say about Cicero. I hope you have read or will read the passages to which I have referred. Now is there any point which you would like to raise now?

Student: I was unable to find that passage on natural . . .

LS: You mean this one. Yes, I will tell you in a moment. That is in the *Republic* 2.57. Yes, good. I mean, by the way, this passage about the difference between Rome and the other cities—that Rome was not mapped out by a single originator at the beginning but came into being in a long process—that reminds very much of Burke's view that [6]that which is planned, planned, blueprinted, is inferior to that which has come into being through a long process.[xv] The similarities are absolutely amazing, and they are [amazing] precisely because Burke cannot have known that passage. This was recovered only about twenty years after Burke's death. And yet Cicero means it very differently from Burke. For Cicero it is at least a possibility that a blueprinted constitution might be as good as one which was developed by a nation in the course of time. For Burke a blueprinted constitution is, as blueprinted, bad. In other words, the antirationalism of Burke in this respect has no parallel in Cicero. This I mention only in passing. I may have to speak of Burke in a somewhat later context. Now—yes, sure?

Student: Do you attribute any special meaning to the fact that in the *Republic* the dialogue begins with a discussion of a natural phenomenon?

LS: The greatest importance. But it appears from the context, doesn't it? What is [7]the context? In Cicero's *Republic* the first theme, so to speak, is a certain natural phenomenon. Two suns were said to have appeared in heaven, and what are the causes of it? But then the more fundamental question is raised: Why should this be of any interest to any man? That there are two parties in Rome deadlocked, on the verge of civil war, is infinitely more important than the two suns.

[xiii] (The transcript has a blank space here.) Gaius Verres (120-43BCE, governor of Sicily, 73-70 BCE.
[xiv] Warren Hastings was appointed governor of Bengal by the East India Company in 1772 and served as the first governor general of India from 1778 to 1884. He exercised arbitrary power in a corrupt administration, but efforts of the Company's board of directors to remove him were unsuccessful. Burke was instrumental in an effort to impeach Hastings and spoke against him in Parliament. See, e.g., Edmund Burke, Speech in Opening the Impeachment of Warren Hastings, Esq., 15th February 1788.
[xv] *Reflections on the Revolution in France* (1790).

That's roughly the situation. The question: the theoretical life and practical life. Very well, how did you understand it, the connection with the polity?[xvi]

Student: The only thing that occurred to me was the question: Should there be one true sun, one sun that was the only one to [be] recognized really, and the other was an illusion, or were there in fact two suns, each one essentially a sun, each one equal?

LS: Well, this I do not—I mean, I would assume from the context it appears that Scipio, at any rate, did not for one moment believe that there were two suns. So this is not the serious question. The serious question is: Is the statesman—does politics require theoretical science? That's the question. And the old-fashioned, so to speak, Spartan view is no; also the old-fashioned Roman view. These are affairs for leisurely Greeks who got what they deserved—they were conquered by the Romans—and no self-respecting Roman will deal with these purely theoretical questions. We rule imperially the world; that's Roman, and [we] acquire the virtues required for that, justice and so on, but not theoretical wisdom. And this was a very grave question, a very grave question. I mean, that was not merely a question for bookworms; it concerns the whole [question of] how Rome was to understand herself in relation to that subject which was in a sense most powerful, and even more powerful than the ruler, namely, Greece. A strange situation. You see, if a Western imperial power conquered some part of Africa, no question of this kind arose. Even in the conquest of India the West as a whole was absolutely sure that the West is superior to India, or to China for that matter. But this was different. The most intelligent Romans felt that they, or Rome was inferior to Greece, and the whole—how would they call it today?—the Roman ego, the Roman sureness of herself, was absolutely confronted by this question. The Greeks were unable to speak up. I think one can prove that. There was no freedom of speech as, say, of freedom of criticism of the Roman rule. One must never believe that. The Greeks were unable to speak up, but there were—in the arts surely they were superior, and I believe the greatest document of that are Plutarch's *Lives*, where Plutarch in each case contrasts a Roman with a Greek; and without saying it, just by telling the stories—without ever saying it, it appears that the Greek was superior to the Roman with whom he was confronted. That is at least my guess on the basis of the few lives which I've studied from this point of view.

So Cicero—no, Cicero was of course convinced of the greatness of Greece, i.e., of Greek philosophy, and he tried to introduce it into Rome. That is the most lasting part of his life work. After all, his affair with Cataline is forgotten—I mean, [it] had no effect beyond that time. But that Cicero brought philosophy into Rome: by this very fact he did as much if not more than Caesar did when he conquered Gaul. I mean, the whole Western world depends on this act, we can say, on this act of Cicero of bringing—of Latinizing philosophy. And Cicero knew, of course, that this was a great achievement, at least as great an achievement as his Consulate, and therefore he has to show and he has to effect a reconciliation between the Roman belief in the supremacy of politics, i.e., practical morality, versus the supremacy of philosophy. And this is, you can say, the primary purpose of the *Republic*. The solution is given in Scipio's dream at the end. Scipio dreams—shortly before his death he has a dream in which his father and stepfather (adopted father; I forgot now the exact situation) appear to him, and he is shown the universe and therewith the smallness of Rome, the paltriness of that object to which he had dedicated his life, [8]and therefore of course the superiority of the theoretical life. This he sees only, as it were, at the

[xvi] The transcriber notes: "Uncertain that he said 'polity.'"

end of his life. While he lives, he is a Roman and a practical man, an imperator, general, administrator and whatever it may be. So this is the context of the dream.

Now how does it affect natural right? I think that comes out very clearly in what Scipio says in the first book. From the highest point of view, theoretically the radical point of view, there is no private property except a right of the good man to those things which he needs, because he is the only one who will use it well. But this principle of course destroys completely all civil society anywhere. If only wise men are permitted to own things, well, you know what will happen. They will immediately be killed by the non-wise who are debarred from the property. That's not a practical solution, so you have to dilute that. And the other point: If only those who cultivate their mind properly are truly human beings—if, in other words, the others in their eyes are not human beings—how can they have genuine duties toward these others? So in other words, natural right understood from the most radical theoretical point of view—I mean, the Platonic point of view—is incompatible with civil society. That means also you cannot understand the theoretical life as primarily understood if you do not raise the question of natural right. That's the simple connection. Did I answer your question? Good. Rabbi Weiss?

Rabbi Weiss: [. . .]

LS: I stated this before. I mean, the natural law doctrine presented in Cicero's *Republic* and *Laws*, and also elsewhere, is the Stoic natural law doctrine; and I spoke about the difference because in the Stoa the notion of natural law becomes for the first time central, contrary to Plato and Aristotle.

Rabbi Weiss: What I mean is the element that right is commanded whereas in Plato and Aristotle . . .

LS: Strictly speaking, no, but may I suggest that you wait until I come—I have to take up this question when discussing the Thomistic view, and then it may become clear. I will now turn to the doctrine of Thomas Aquinas, who one can rightly call the classic of natural law within Christianity, and perhaps even generally speaking. Now let us first—we must consider the context in which the natural law teaching occurs. In Plato and Aristotle the context was political or moral: *Republic* and *Laws* are political books; Aristotle's *Ethics* is a moral–political book. In the Stoics the context was probably physics, physics understood as the science of nature in general, because what later on came to be called natural theology was for the Stoics a part of physics. In Thomas Acquinas the context is theological. The most developed form of the doctrine occurs in the *Summa Theologica*, obviously a theological work devoted to the sacred doctrine, i.e., to revealed theology. But it is understood that the revealed theology contains also the rational doctrine regarding God and regarding the law which God gives.

Now in studying Thomas Aquinas one must of course always make a distinction: whether a given doctrine is presented as rational or suprarational. This distinction is not always explicitly made. One derives some help from the authorities to which Thomas refers. Is that authority pagan—say, Aristotle or Cicero—or is it Christian? This obviously [has to be considered]—because if it is pagan it stands to reason that this will not be a view based on revelation. But this criterion is by no means decisive. For example, Thomas discusses the question of the existence

of God. The authority is the biblical word, "I am who I am"—or "what I am"—and of course Aristotle too has demonstrations of the existence of God. Naturally this distinction is of crucial importance regarding natural law. Is natural law as Thomas Aquinas understands it truly a dictate of natural reason or is it perhaps based, without his knowing it, without his admitting it, on revelation?

The greatest philosophic authority for Thomas Aquinas is Aristotle. Thomas wrote commentaries on many of the Aristotelian works. Aristotle is for him The Philosopher and his commentaries are eminently useful, but of course Aristotle cannot be the philosophic source of Thomas's natural law teaching. In the question dealing with natural law explicitly, the authorities are all Christian. But on the other hand, Thomas had access to Cicero and indirectly therefore also to the Stoics; and he had access naturally also to Roman law, and the Roman law contained a number of references, although not very clear references, to natural law. He also knew directly Plato's *Timaeus*, which is not very important here, but he knew the other [parts of] the Platonic teaching in a general way, partly through Aristotle and partly through Augustine. A certain check regarding Thomas's doctrine is supplied by those Aristotelians of his age who did not accept revelation. They are known by the name of Averroists, after the Latinized name of an Islamic philosopher, Averroes, twelfth century. There were a number of Christian writers, at least nominally Christian writers, who accepted the Averroistic doctrine, especially in Paris in the age of Thomas and later.

I would like to mention here only some consideration why there must be a difference between Thomas Aquinas and Aristotle regarding natural right. First, of course, there is no natural law teaching proper in Aristotle. Secondly—and the other things are substantive—Aristotle teaches that exposure of infants and birth control are legitimate. Thomas Aquinas denies that, and the reason is the dignity of man as created in the image of God, and there is of course no such creation according to Aristotle. This question of the dignity of man in the biblical or non-biblical understanding is of the greatest importance up to the present day, [9]for example in penal law. The second massive substantive difference concerns slavery. From Aristotle's point of view, legal slavery, i.e., the enslavement of men who are not by nature slaves, is simply unjust. Thomas Aquinas, following the Roman law, asserts that legal slavery is just and has been introduced as a benefit of the so-called *jus gentium*, of the law of nations, and namely it's a benefit because the victor could very well have killed them—the prisoners—and he does them a favor by only enslaving them. The third substantive point, and the last one I mention, concerns a question which I have mentioned before regarding divine worship: that from Aristotle's point of view divine worship is an essential part of civil society and to that extent by nature right where the question of the truth of that worship does not arise at all; and for Thomas Aquinas the question of truth is absolutely crucial. I might take this up somewhat later again if necessary.

Now I must also say a word about the form in which Thomas Aquinas presents his teaching, especially in the theological *Summa*. Now this form is neither the treatise—the way in which, say, Aristotle or Hobbes or Locke or Rousseau present their teaching—nor the dialogue, the form in which Plato and Cicero present their teaching, but the disputed question. This is a peculiarity of the Christian Middle Ages, a form of presentation which reached its maturity, as I have learned from the literature, shortly before Thomas Aquinas, but Thomas Aquinas is somehow the greatest master of it. The procedure is roughly this. A question is raised, say, whether there is

natural law. And then it goes on: It seems that there is no natural law. The arguments against natural law are enumerated, sometimes with indicating the men who made these assertions, sometimes without. Then it goes on, *sed contra*: but against that. And then the assertion is made: There is natural law. Ordinarily the bald assertion is reported by an authority. And then there comes the body of the question which begins, "I answer by saying," and then Thomas expounds his view coherently; and then after having finished that he replies to the objections point by point. This is the general procedure.

Now this, as I know very well from my own experience[10], is of course completely strange to our habits, and to begin with it is very difficult to understand it. For example, when the question is discussed on natural law—this is, I think, the most convenient example—this is discussed in question [11]91, whether there is in us some natural law. Now then there are three arguments [that] are given, but that argument which we would regard as the most obvious, the variety of notions of right in different peoples, which is not a moral argument but occurs right at the beginning of Aristotle's *Ethics*, is not mentioned. In other words, Thomas does not necessarily start from the primary question. This is I believe the difficulty which I always had, and only by studying for a long time can one find the places where he takes up the primary questions.

And the next article is whether there is some human law. Now where the commonsense reaction would be of course there is—everyone knows there is a human law—what does Thomas say? "But against the denial of a human law St. Augustine asserts there are two laws, one eternal and the other temporal, which he calls human." So the authority of Augustine is necessary in order to assure the reader, in a way Thomas himself, that there is a human law. Now of course then one has to think about it. Thomas had as much common sense as we have, so there must have been some reasons, but very complex reasons, against the possibility of a human law. Only on the basis [12][of understanding] these reasons can one possibly understand the procedure. The procedure is not logical in our sense, that he starts from the first premises and proceeds, goes step by step. But he follows the order, a logical order of the questions, but this logical order of the questions is not the logical order of the exposition. This is, I believe, the great difficulty.

Now the overall structure of the argument in the *Summa Theologica* is this. [It] consists or was planned to consist of three parts: [the] first, on God; the second, on man; and the third on God having become man, the Christology. The doctrine of natural law belongs naturally to the second part, on man, and this second part is roughly divided as follows. That is the usual way in which it is quoted.[13] The second part consists again of two parts, which are ordinarily quoted this way and this way: *prima secunda* and *secunda secunda*. This is the way [LS writes on the blackboard], or or you can do it this way. Now naturally these parts are distinguished as follows. Generally speaking, the first part deals with virtue and vice in general, and the second part with the particular virtues and vices. More specifically, the first part deals first with an end of man and then [with] the acts leading to that end: (a) these acts themselves, (b) their principles; and the principles are twofold, intrinsic or extrinsic. The intrinsic principles of the actions are power and habit—power, potentiality, and habit, because virtues and vices are habits. The extrinsic principle is the inclination to the evil from the outside—that's the Devil; and the inclination to the good stems from God, and God extrinsically affects our action by law and by grace, and hence the subject [of] law comes in in this context. Natural law is discussed therefore in this

context. Natural right, on the other hand, belonging to the special virtue of justice, is discussed in the *secunda secunda* when he speaks of the virtue of justice as a special virtue.

Now while this rough plan which I sketched here is Aristotelian—Aristotle discusses first virtue in general before he discusses the particular virtues—this section regarding laws has no parallel in the Aristotelian scheme and this, I think, only confirms what I have said earlier about the Aristotelian doctrine. Now natural law, to come then to the special subject, is a law. Therefore, first we have to raise the question: What is law as such? And second, What kinds of law are there? so that we can see how natural law is related to the other kinds of law. So I give you now a brief summary of these questions about what is law as such and what other kinds of law, questions 90 and 91 of the *prima secunda*.

What is law as such? Now one would assume at first glance, and one must at least try to do that, [that] what he says about law as such would apply to natural law in particular because it's also law. Now we learn then first that law is some rule and measure of human acts. As measuring and ruling it resides in reason, in the reason which makes the law. In other words, law is not reason, but law is related to reason as a house is to the building of the house. The law is a product of reason. Now the reason in question is practical reason, not theoretical reason. Law is always ordered toward a common good. The principle of all actions is felicity or happiness. Every part is ordered toward the whole to which it belongs, but every man is a part of a perfect community; hence every human being is ordered toward the perfect community. I take this to mean true felicity is the common good of all men, i.e., the common good which constitutes a society embracing all men. Natural law is a law ordering the universal society. This is also what one would expect on the basis of what we have learned from Cicero. Every part is ordered toward the whole to which it belongs. A simple example would be any part of the human body: the hand. The goodness of the hand cannot be understood except in terms of the function it has [within][xvii] the body.

The third article: only the reason of the community or of Him who is in charge of the community can give laws to the community. An individual, a private individual as such cannot be a lawgiver. And this would of course imply, although it is not explicitly said here, that only God can give the natural law. Why can a private man not give laws to other men, or why can a man not give laws to himself? The answer given is: Such commands which a private man gives to himself or others would lack coercive power—Aristotelian reasoning. A private man cannot inflict punishment. This would lead to the consequence not stated: natural law has coercive power. Transgressions of it are punished, of course, by God. And the last article there: laws must be promulgated in order to have their power. Now the promulgation of the natural law consists in the fact that God has imprinted it on the minds of men so that they can know it by nature: *naturaliter*.

The next question, number 91, deals with the kinds of law, and the kinds of law are these: eternal law; natural law; human law; divine law. By the way, you find this whole view with some modifications but substantially the same in Hooker's *Laws of Ecclesiastical Polity*, because I believe most of you don't read Latin. Most of you don't read Latin. Is this—you seem to protest? I believe it is a reasonable assumption. And then you have to depend on translations, and that is

[xvii] The transcript has a blank space here.

not so good. But Hooker is an English writer, and a wonderful English writer, and then you will have great enjoyment in reading him. Now the eternal law is, one may say, divine providence itself. The world is ruled by divine providence, i.e., it is governed by divine reason. This governance is the eternal law. The eternal law is God Himself. Thomas makes a distinction between the eternal law and natural law, a distinction which was not made by the Stoics. The natural law—the question arises first: Why is there any need for it, given the fact of divine providence or of the eternal law? Answer: Man is subject to divine providence in a special way. He participates in Providence. He has been created so that he can provide—providence, provide—for himself and others. The natural law is therefore a participation in the eternal law on the part of a rational creature. The human law is derivative from the natural law, i.e., it is not simply natural but derivative from natural; and this way of derivation we must discuss later. The divine law is also in a way derivative from the natural law, but it originates not in human will but in divine will; and a divine law is needed because man has also and above all a supranatural end, whereas the human law is concerned only with the happiness of this life. There is a twofold divine law, namely, that of the Old Testament and that of the New Testament, and the relation is understood in the Christian way: the Old Testament belongs to an imperfect stage of man, as it were childhood, and the New Testament to the perfect, to manhood.

Thomas discusses then in the next chapter the effects of law. The effect of law is, as Aristotle had said before, to make man good. But here certain difficulties arise. Let me see—yes, the acts of laws were described by an authority as commanding, forbidding, permitting and punishing. And then it is said: "Just as a man is incited to the good by punishment so also sometimes by rewards. Hence, if punishment is said to be an effect of law, rewarding also should be one. Furthermore, it is an intention of the legislator to make men good, but he who obeys the law only out of fear of punishment is not good. Hence, it should not be a peculiarity of the law to punish." Now how does Thomas answer to this objection? "It is quite true that rewarding may belong to someone but punishment belongs only to the minister of the law by whose authority punishment is inflicted and hence the act of law is not said to be rewarding but only punishing." In other words, rewarding can also be done by people other than [those] people authorized by the law for that purpose. Punishment is limited to them. The other point: "By that fact that someone comes to get accustomed to avoiding evil and doing the good out of fear of punishment he is sometimes brought to do it pleasantly or out of his own will and in this way the law leads by punishment to that final result that men are good." So punishment is a genuine and legitimate mode of law. Law has to a certain extent a punitive character.

Now we come now to the question of most importance to us, the precise relation of natural law and human law. And Thomas starts from this overall view: there are principles of practical reason just as there are principles of theoretical reason. And the principle of theoretical reason is being and the principle of practical reason is good, but for men this is of course specified: the human good and the human good is to be determined according to the nature of man. That which is by nature good for man is something to which man has by nature an inclination. This is a classical premise of Thomas's teaching. Now let me read to you something: the key passage. That is in question 94, article 2.

"Since the good has the character of an end, and the bad the character of the opposite [namely, of something to be avoided—LS], it follows that all those things toward

which man has a natural inclination, reason apprehends by nature as good and hence as to be pursued indeed, and their opposites as bad and to be avoided. According to the order of the natural inclination is the order of the precepts of natural law. Man has, in the first place, an inclination toward the good according to the nature which he shares with all beings insofar as every being strives for its preservation according to its nature [meaning a horse does not merely desire to be alive, but to be alive as a horse; just as we, when we speak of self-preservation we mean, of course, our preservation as human beings—LS].

"And according to this inclination there belongs to the natural law that by which the life of man is preserved and the opposite prevented. Secondly, a man has an inclination to some more special things in accordance with the nature which he shares with the other animals, and according to that those things are said to belong to the natural law which nature taught all animals, as is the conjunction of male and female, the education of children and similar things. In the third place, man has an inclination to a good according to the nature of reason, which is peculiar to him [meaning in contradistinction to the other animals—LS] just as man has a natural inclination to that that he knows the truth about God and to that that he lives in society. And accordingly, to the natural law there belongs that which refers to such-like inclination, namely, that man avoids ignorance, that he does not offend others with whom he has to live [etc.—LS]."[xviii]

So this is the key passage calling the natural inclination in Thomas Aquinas [a] threefold one, as you have seen. So for all practical purposes, the key point is [that] man has a natural inclination toward society. Man is by nature a social being. This does not mean, however, that man has a natural inclination to this or that particular *polis*, city. I read to you a passage here somewhat earlier: *prima secunda*, question 60, article 5. No, one second, you must excuse me—one more second. I'm sorry. No, it is in the first part of the *Summa*, which I do not have with me. I'm sorry, in the first part of the *Summa*, question 60, article 5, where you find a discussion which implies that the natural inclination toward society is not the same as the natural inclination toward the *polis* as Aristotle understood it.

But the more specific points to which I must come now are these. The reasoning underlying natural law has, in a way, the same character as theoretical reasoning. There are principles, axiom-like in each case, and conclusions. So, for example, if it is something like the principle "Society is good," it follows of course that everything which is as a matter of principle conducive to society is good. But whereas in mathematics the conclusions are as certain as the axioms, the same is not true here. The more specific the conclusions are, the more are they exposed to exceptions. Now common sense would easily show that. For example, the conclusion, let us assume, "Society requires peace" and "Peace requires that everyone knows what belongs to him and what does not belong to him": property. Now if [there is] property, there must be prohibition against theft and robbery and this kind of thing. There must also be, given the fact of the mutual need of men, some possibility of borrowing and lending, and rules against that, and more specifically, rendering of deposits. And now we [all] know[14] the famous example: if the

[xviii] *Summa Theologica*, First Part of the Second Part [*Prima Secunda*], Question 94, "Of the Natural Law," article 2.

deposit was a gun and the owner has become insane in the meantime, it may be positively unjust to do what ordinarily is just, namely, return a deposit. May I mention strictly in parenthesis the following point? In the medieval literature of this kind—I, for one, am not very familiar with it but I have a certain knowledge—I'm struck by the fact that very few examples, identically the same examples, are used all the time by all writers. In other words, there is no need for variety. For example, when they discuss a parallel to reason, an analagon of reason in animals, a kind of instinct that the lamb is attracted by her mother and repelled by the wolf: this example occurs in every writer whenever the subject comes up. No one ever thought it necessary to vary a bit. This is, I think, one [. . .] characteristic of scholastic literature, but this only really in passing.

Now to repeat, the key point then is that according to the Thomistic teaching the principles themselves and the highest conclusions are universally valid, but the more you step down the more they are qualifiedly valid. The principles are never changed, but some conclusions are of qualified validity. All human law, *human* law, is a law to the extent to which it is derived from natural law. That is the key teaching. But there is a twofold derivation: the first one as conclusion from the principles, and the second by way of determination, as Thomas calls it. Now conclusions are similar to scientific demonstration, and determination is similar to arts. For example, someone has the art of housebuilding—the determination to build *this* house of *this* shape on *this* ground etc., rather than another—this is a determination which is not given with the art as such. This is an act, a special act, of the will. The human law derives from natural law either by conclusion or by determination. One could wonder why a conclusion from natural law should not still be natural law and not human law, as Thomas says. I believe he means this as follows. If you take a relatively remote conclusion from natural law, something which in itself is strictly natural, it would not be known to the majority of the people as the highest principles—like the prohibition against killing is known—so that it owes, in effect, its validity to having been promulgated by the human legislator. That, I believe, is the way in which he understands that.

Now the most important question of course concerns the mutability of natural law. Thomas denies, yes, [the] mutability of natural law, and he discusses this question especially in the section concerning the old law, i.e., the Old Testament law. The Old Testament law includes moral precepts in contradistinction to the ceremonial and judicial precepts; and according to the Christian teaching, while the ceremonial and judicial precepts have become abrogated with the coming of Christ, the moral precepts are valid. All moral precepts of the Old Testament belong to natural law and the moral principles are, sufficiently for all practical purposes, conveyed through the Ten Commandments. But not all ten commandments are strictly speaking of natural law; for example, not the prohibition against idolatry and against taking the name of the Lord in vain. These prohibitions require supernatural illumination, as does the law regarding the Sabbath. Now there is a passage which I thought I should read to you, Question 100, article 8, the first objection.

"The precepts of the decalogue are of natural law, but what is by nature just is deficient in some things and mutable, just as is human nature, as the Philosopher says in the fifth book of the *Ethics*. [This is the passage on natural right which we have here discussed—LS] But the defect of the law in some particular cases is a reason for

dispensing [meaning for allowing the opposite, as has been said before—LS]. Hence, in the precepts of the decalogue dispensation may take place."[xix]

Now Thomas denies that any of the ten precepts can be dispensed with. There is perhaps a passage which I should read: "The intention of every legislator is ordered primarily and principally to the common good, secondarily however to the order of justice and virtue according to which the common good is preserved and arrived at."[xx]

This is a statement in itself in absolute agreement with Aristotle, but I think it also shows the difference between Thomas and Aristotle. For Aristotle there is a possibility that the principal intention of the legislator, namely, the common good, and the second intention, namely, the order of justice and virtue by which the common good is preserved and arrived at, do not simply agree: in the famous cases of necessity, where the common good, the preservation of the society in particular, may require deviation from what ordinarily is just. Thomas of course allows some form of dispensation, but this is only strictly speaking divine dispensation; and the case, for example, of Abraham commanded to kill his son Isaac, which would seem to mean a case of homicide, is not homicide, because according to Thomas Isaac was condemned to death by the very fact of original sin and therefore that is not an act of commanded homicide. Whether this is sufficiently convincing is another question. No, I mean this seriously, I mean whether this is an argument which is defensible on the basis of natural reason alone. But this leads to an infinite question. I only mention it as one point at least where the question of dispensation of the principles of the decalogue is discussed by Thomas.

Now a word about the sanctions for natural law in the Thomistic understanding. I have inferred from the general definition of law that transgressions of the natural law are punished and punished by God; for since surely man is not the giver of the natural law and punishing belongs to the lawgiver, natural law would seem to be sanctioned by divine rewards and punishments. Thomas specifically fights the error of Marcion and Valentinus, famous scholastics,[xxi] that God does not punish, or in other words, that there is a good God in contradistinction to the just God, the lower God, who punishes. So God does punish.[15] Thomas speaks then of the order of rank of punishments. The gravest punishment is exclusion from beatitude; secondly, deprivation of virtue; three, bodily harm; four, love of external goods. Bodily harm including also death, naturally. It is of the essence of punishment not only that it deprives us of some good but also that it is contrary to the will of the transgressor. Do you see that? I mean, do you understand that? [16]Well, you know such cases, perhaps from folklore. I know them. [For example], in rural parts in Germany, the fellow—the shepherd who was unemployed during the winter liked to have a heated home, and he committed some minor thing and so he spent the winter well-heated in the local jail. You know? So this punishment deprived him of some good, liberty, but it was not contrary to the will of the transgressor. So a true punishment should fulfill two conditions.

[xix] *Summa Theologica*, *Prima Secunda*, Question 100, Article 8, objection 1. Presumably Strauss's translation.
[xx] *Summa Theologica*, *Prima Secunda*, Question 100, Article 8, from Aquinas's reply to Objection 4. Presumably Strauss's translation.
[xxi] Marcion and Valentinus were Gnostics.

Now the practical meaning is this: some men do not estimate the good things according to their true order. They do not mind loss of eternal felicity in which they do not believe, but they mind very much capital punishment and so on. Hence they believe that God does not punish crimes, in the famous fact of the prosperity of the wicked and the misery of the good. They do not know what Thomas asserts is the case: that worldly prosperity may in itself be a punishment in the form of a temptation to greater sin. The main point is this: the essence of punishment is the loss of the highest goods, not that the punishment is against the will of the transgressor. This is Thomas's final decision. After all, some people wish to undergo punishment not because they are so-called masochists but because they feel that they are guilty and they deserve punishment, and still that would not affect the fact that they deserve punishment at all. Nevertheless, punishment must be punishment also in the mind of the sinner or transgressor. And now but if you take a certain kind of man, one can very well assume that he is in no way affected by that, by the fact that he deserves punishment. The sinners must necessarily be punished in a way which the sinners fear: hence the threat of eternal fire in Scripture. This is Thomas's refutation of the error of Algazel, an Islamic philosopher who had said that there is no other divine punishment except loss of the ultimate beatitude.[xxii] So this would seem then to be the sanction of natural law in one way or the other.

But the following question arises: Is this punishment knowable to human reason? What does human reason know about the imortality of the soul? There was a great quarrel among the Aristotelians of Thomas's time: whether Aristotle taught the immortality of the individual soul, or rather intellect, or whether he only taught the immortality of simple intellect. Thomas Aquinas is sure that Aristotle taught the immortality of the individual intellect. I will take up this question of the sanctions of natural law; that became crucial later on in the thought of Locke. I will take it up in this context. But this is still a question which is by no means settled by the few remarks I made. I will take this up next time on the basis of a later commentator of Thomas Aquinas. Is there strictly speaking a sanction for the transgression of natural law? This I will take up later. The inference from the way in which Thomas discusses the subject in the *prima secunda*, namely, that when speaking of the essence of law he speaks of punishment as an essential part of it, speaking of law in general, would be that this would apply to natural law in particular. But maybe that's a hasty conclusion.

Now I must here make a stop so that we have a few minutes at least for a discussion. Next time I will then discuss Suárez, who is the most famous, perhaps the most famous commentator on Thomas Aquinas because he takes up the question of the sanctions of natural law very specifically. And then I will discuss some medieval alternatives to the Thomistic teaching, Duns Scotus and [17]Marsilius, and then we will turn perhaps next week to modern natural right. You must not forget we don't have too much time any more. Yes?

Student: Can I ask a question about Cicero?

LS: It's also dark in Cicero whether there are any punishments except those inherent. You know? If someone[18] becomes a degraded or debased human being by committing a certain action

[xxii] Al-Ghazali (ca. 1059-1111), Persian philosopher, theologian and jurist of Sunni Islam. Hhis works include *Incoherence of the Philosophers* and *Faith in Divine Unity*. Strauss may, however, have meant Averroes.

or various actions of a certain kind, that's all there is to it. I mean, in other words, that he may be shunned by his fellow men or even worse than that—this is not an essential effect, you know, because it may not become known to the others. So you know there is no effect beyond what you do to yourself, to your soul. That I believe is the Ciceronian and possibly also the Thomistic view, but I'm not so certain of that.

Same Student: But the question I wanted to ask on Cicero is more his relation to Plato. He seems to me to be not quite as similar to Plato as has been remarked, because in many passages he talks about the superiority of the man who, having studied human affairs, then comes back and rules—his superiority of the man who combines knowledge and practical experience to the man who either relies on practical experience or intellect alone. Those passages would seem to indicate that the philosopher will return to the cave and, if he does, that that sort of life is superior to the life of—

LS: At least officially, that is of course what Plato says in the *Republic*; only in Plato's case it is bound up—this return is bound up with the quality of the *polis* to which he returns.

Same Student: But in fact Plato would say that the life of the philosopher is superior and he does not want to return, whereas Cicero seems to argue that—

LS: Yes. Quite clear, emphatically so. Yes, sure. But still that [19]is not necessarily a fundamental question, because [20]the question of the theoretical and practical life, it means, What kind of practical life, a practical life completely devoid of philosophic guidance or a practical life guided by philosophy? Now clearly Cicero is in favor of the practical life guided by philosophy, but the guiding is essentially higher than the guided. Would you admit that? The directing thing is philosophy. The directed—

Same Student: But the statesman-philosopher is a superior human being to the philosopher simply.

LS: Could still be, but then within him that guiding thing is philosophy. Yes? To that extent there is agreement. Yes. I don't deny the importance of your question, but it is not the primary question. The primary question is the order of rank between theoretical understanding and practical understanding, and there Cicero agrees with Plato and Aristotle. Yes?

Student: Does Plato admit the validity of practical knowledge and [21]if not, does Cicero in fact admit the validity of practical knowledge as such or, in another way of putting it, of the moral virtue which Plato doesn't?

LS: Yes, well this is the point. You see, the teaching on the virtues which Cicero gives in *De Finibus*, which is the chief work on that, is what I said before. That is a modification of the Stoic teaching, and that means there is no moral virtue, i.e., virtue consists of the four cardinal virtues, as they came to be called: wisdom, courage, temperance, and justice. They are impossible, the others are impossible without wisdom. Wisdom means here theoretical wisdom, not merely the Aristotelian prudence. That is the characteristic—I mean, very schematically one can say, and please don't quote me for that is only a slight help: moral virtue is a peculiarity of Aristotle.

Plato does not know moral virtue as moral virtue. What Aristotle calls moral virtue is for him vulgar virtue, not genuine virtue. Genuine virtue is inseparable from philosophy in the individual. You know, that the virtuous man—man is virtuous to the extent to which he is philosophizing. All his acts of courage, temperance, and so on, are either genuine or spurious. If he is not a philosophizing man they are spurious, which doesn't mean that these imitations of genuine virtue are not of very great practical importance. Of course they are, but they are questionable. You can easily understand it [22]if you compare the Platonic position with the religious position: that from a religious point of view the decency of unbelieving men is of course better than if they were indecent, but it is fundamentally a leaky vessel, and what religion says from a religious point of view Plato says from philosophic point of view.

Now in the Stoics—that is very close to Plato. I mean, it lacks the soaring and uplifting quality of Platonic statements, naturally, but baldly stated, man's goodness consists in the possession, in the practice, of these four virtues and no one can practice them who is not a sapient, a wise man. But a wise man means theoretically wise. The Stoics assert that logic, dialectics, physics, are virtues. They are as much virtues as justice and temperance is virtue. So a man deprived of them is of course better—I mean, [a man] deprived of wisdom who is in the ordinary sense of the word decent is of course preferable to a traitor and whatnot, but he is not strictly speaking a good man. In that respect, I would say they agree.

Same Student: Well, is the fact that the Stoics expect somehow all men to have this requisite wisdom? And it doesn't seem to me that Plato does. In other words, for Plato certain men are to be truly virtuous, and for the Stoics all men are.

LS: Yes, well let me put it this way. There is something to that, and I believe I also mentioned it. When one reads Plato, especially the *Republic* but also the other writings, one sees sooner or later that in Plato's view only relatively few men can be philosophers. When you read the Stoics, you get the impression that this teaching is addressed to all men, which would seem to imply that all men can become sages if they only want to, but it is never explicitly said, and I would say there are quite a few statements in Cicero which make one doubtful that the Stoics believed that wisdom is possible for every man. But clearly this great question of the equality or inequality of all men regarding virtue is not discussed emphatically by the Stoics, both in Cicero and in the later Stoic writers as well as in the fragments, whereas this question is emphatically discussed by Plato. That is quite true. Yes?

Student: The confusing thing: there seems to be a contradiction between, say, that famous passage you quoted on which some people take it to demonstrate natural equality. In that passage it says that in the capacity to learn, reason is invariable in all men . . .

LS: Yes, but—

Same Student: . . . in another passage in the third book of the *Republic* where there is the existence of natural slaves admitted.

LS: Yes, and surely—yes, and quite a bit. I have discussed this very briefly in my study on *Natural Right and History*, and if you would look up all the footnotes which I have here you

would get the more important evidence, but I have been blamed for this practice. But otherwise, I think I am familiar with the question. By the way, in that context Cicero says all men are equal as to the capacity of learning. This is an ambiguous statement. That may mean all men are equal insofar as they can learn, but it does not necessarily mean that all men have the equal capacity of learning. A little bit later in the same passage he says that there is no one in any race who cannot acquire virtue if he has found a guide. Now obviously that's an allusion to inequalities. Some can find virtue without a guide and others cannot, and it depends how much of a guide [one has]. I have no doubt that Cicero took the inequality of men in this decisive respect for granted, and the only passage which raises a doubt is this passage in the *Laws* which became a cornerstone in the history of political thought through its misuse by the brothers Carlyle. You know the brothers Carlyle, who wrote the six-volume work on the history of political thought in the West,[xxiii] and they have this very charming simple view that there are three periods in the history of political thought: first, of course, Plato and Aristotle; and then from the Stoics up to the French Revolution included; and then Burke and the historical sense of the nineteenth century. That is, I believe, what they mean. And now why is there this unity? Because in this period belief in natural law, and that means belief in the equality of all men, and this was obviously the basis of the French Revolution or of the Declaration of Independence. You find such texts in the Roman law text[s] and you find it according to Carlyle also in Cicero, namely, in this passage. And this had all to do with the fact that Alexander the Great destroyed the Greek city. Yes, please.

Student: [Inaudible question regarding Plato.][xxiv]

LS: Yes, that is a very good question, a very good question. And there is a passage in the *Timaeus*, by the way, in which—the only passage, I think, in Plato [or] in the literature prior—I mean, in Plato or Aristotle[23]—where natural equality is presented as a just demand on God: that God could not justly have created men unequal. There is a passage in the *Timaeus* to this effect, and this deserves careful discussion. The answer to your question I believe is simple. According to this mythical doctrine of Plato—you must not forget that is not literally true—man is distinguished from the brutes by the fact that his soul has seen the ideas prior to becoming embodied—literally incarnated. Yes? Has seen the ideas. In English, it means man is a being [. . .] which possesses an intellect, an intellect, the intellect being directed toward the ideas. To that extent all men are equal. But then they become embodied, and by this very fact inequality arises. That's the point. I mean, again, you must not merely treat the Platonic dogmas which are frequently, if not in all cases, absolutely paradoxical and repelling for this reason; but one must think of the experience, of the empirical observations which Plato had in mind.

Now there are people, for example, who [24]have such strong bodily desires which keep them always in a distracted form. How can they think? There are other people who are so fearsome of all evil things, whether they are mosquitoes or graver things, that they are constantly preoccupied with worries and fears, constitutionally. Now they can do something about it, but even if they do the most about it, the net result will be inferior to people who have a happy temperament by nature. And I think Plato presents that happy blend in its most perfect form known to him by Socrates. That is, I think, the meaning of this famous demonic thing which Socrates possessed,

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[xxiii] R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* [1903] (Edinburgh, London: Blackwood, 1962).
[xxiv] As noted by the transcriber.

that he was the man most fitted by nature for philosophizing. His body was perfectly obedient. He could drink more than anyone else and still remain sober, for example. In other words, his thinking capacity could not be impaired by anything which he—on the day of his death, where people normally are distracted, Socrates was the only one present who was not distracted so that he could quietly comfort the others about the loss which they are about to incur. That is Plato's view, and that this has to do with the body of Socrates is indicated by the many references to Socrates's strange body. It was not exactly a beautiful body, as we learn, but on the whole the mixture was perfect. You can say the inequality of the intellects has to do—has its root in a way in the bodies, very strangely. That is even taught somewhere in Thomas's *Summa Theologica*. That was the older view. Mr. Butterworth?

Mr. Butterworth: [Question regarding the fact that Thomas had knowledge of the *Timaeus* but not of other Platonic dialogues][xxv]

LS: Yes, well—yes, I said that, but come to think of it, [25]the *Timaeus* was translated into Latin and was always known in the Christian Middle Ages. The *Republic* was translated only in the fifteenth century into Latin, so it was unknown to him. Now there were some other dialogues which were known—I forgot—the *Phaedo* and so; I do not know exactly.

Mr. Butterworth: It's very clear that he certainly didn't have the corpus, though.

LS: No, no. That's clear. And the most interesting from the point of view of political philosophy: the *Republic* was unknown in the Middle Ages and [26]in the West became known only in the fifteenth century. Therefore what Thomas knows of Plato, [of] his political views, he all knows from the second book of the *Politics*, from Aristotle's criticism. Yes?

Mr. Butterworth: Could you very briefly give an account as to how that affects his view of natural law?

LS: Well, in this general way—no, I do not believe that this [by itself is sufficient]. Well, if you add to this the fact that Aristotle became powerful in the West also only from about 1200, roughly; the logical items were earlier known but the others came to be known only about this time. Of course there was the philosophic tradition as directly known [that] was that supplied by Cicero and other writers of this kind, including Roman law, and Plato and Aristotle were absent, so to speak. That one can very roughly say, but it's too rough.

Mr. Butterworth: But on the other hand, Aquinas certainly had this knowledge of Aristotle.

LS: Sure, sure.

Mr. Butterworth: So just to try and balance the differences between knowing Aristotle and not knowing Plato—

LS: Yes, well, you see the point; a man of the first order like Thomas doesn't need so many texts as we poor people need. For example, in the Roman law texts, in these very few and sparse texts,

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[xxv] As noted by the transcriber.

there are two different notions of natural law or natural right, one roughly corresponding to what the Christian tradition says, and Thomas in particular too says, but another one says natural right is that which nature taught all animals. According to this view all specifically human things do not belong to natural law, and the simple inference from this passage would be they are based somehow on establishment. Now this alone could induce a thinking man to develop an argument even if it was not known to him from the greatest texts. Good. Mr. Erikson?

Mr. Erikson: [Regarding the distinction between the gang of robbers and civil society considered from the point of view of Robin Hood.][xxvi]

LS: Yes, that does not [show the problem] because here it is clearly perhaps a misguided notion of justice but surely a notion of justice, whereas the other thing simply says justice is a necessary evil for any people cooperating in an enterprise. That's all there is to it. But Robin Hood had a much loftier notion of justice. He felt that he should correct the deficient justice available in human society, and to do it by means which are not just, i.e., legal. That is, I think, if I understand it correctly, the same [as] what Perry Mason does once a week when he breaks and enters into houses to get evidence in order to help an innocent accused man.[xxvii] Is this not the same kind of thing? And I think Perry Mason is really a very great representative of justice. You know? His trembling friend, Paul, of course doesn't have the stamina for that. That's a different case. So then we will discuss next time the rest of the medieval things.

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[1] Deleted "criteria."
[2] Deleted "Now in other words, they are—"
[3] Deleted "this."
[4] Deleted "than."
[5] Deleted "this."
[6] Deleted "nothing."
[7] Deleted "what's."
[8] Deleted "but"
[9] Deleted "I mean."
[10] Deleted "to begin"
[11] Deleted "90. No, maybe I made a mistake. No, I'm sorry, question"
[12] Deleted "if one understands."
[13] Deleted "That is the usual way in which it is quoted. So there is."
[14] Moved "all."
[15] Deleted "he also—and."
[16] Deleted "For example, if someone—."
[17] Deleted "Marsilius."
[18] Deleted "degrades"
[19] Deleted "does not necessarily—when you have this."
[20] Deleted "if—."
[21] Deleted "if so—."
[22] Deleted "form—."
[23] Changed from "the only passage, I think, in Plato—in the literature prior—I mean in Plato or Aristotle"
[24] Deleted "are."

[xxvi] As noted by the transcriber.
[xxvii] Strauss refers to a popular television series created by Erle Stanley Gardner and starring Raymond Burr.

[25] Deleted “that.”
[26] Deleted” became known only”

Session 12: November 14, 1962

Leo Strauss: [In progress] "—inclination to sin and therefore sin is by nature good for man. But Aquinas, of course, would deny that sin is by nature good for man. Hence it seems that his definition of what is by nature good for man is meaningless."[i] Well, it is not meaningless, because he makes a distinction between natural inclinations and perversions of these inclinations, and therefore this difficulty disappears unless it is impossible to make a distinction between natural and perverted inclinations. But [l]without going into any deeper question, when people speak today of perverted people, say, sexually perverted people, they still agree with Thomas's view that there are natural inclinations and perverted inclinations. So this difficulty doesn't exist.

Second, "Would you please explain what you were saying in your last lecture about determination and conclusion, that is to say, about the relation between natural law and human law?" Well, I can only repeat what I said. According to Thomas Aquinas all human law is based on natural law, but there are two ways in which human law is derived from natural law. The one is by conclusions, simply deductive conclusions, and the other is by way of determination. That is to say, when natural reason would not decide either way, then competent authority picks one of these two or more ways. Left and right driving: that would be determination. Now the difficulty concerns conclusions. Are not conclusions from natural law themselves part of natural law and therefore not human law? And I believe the answer one has to give is this. They are indeed—[they] belong to natural law in themselves, but for the majority of men at least they lack the evidence which the principles of natural law have, and therefore they acquire their authority for the large majority of men only by becoming commands of the human legislator. Now Mr. Glenn, I don't see you. Is this a sufficient answer?

Student: [. . .]

LS: I do not have the intention, but if you can rephrase your objection, then I will do that.

Same Student: Well, my problem is this: how are we to know natural law except by observing man as man, observing men, and if we observe men as men and not as individual men but just as the genus man, we observe a [. . .] all right. Now, how do we know whether these things are the natural law or the perversions of the natural law?

LS: In other words—I see. If you understand observation in the sense in which Mr. Kinsey[ii] understands it, you know, then of course you do not get any guidance. You find so and so many percent are normal, and so and so many percent have this so-called perversion, and so on, and they are not strictly speaking perversions; the one is as good as any other. But Thomas means, of course, while observation is the starting point of any understanding, we arrive eventually at an insight into what constitutes the essence of man, the nature of man, in contradistinction to other living beings, and then the result is man is that animal which possesses reason or speech. He is an animal, but he is an animal distinguished from the others by possessing speech. Now *qua*

[i] Strauss begins by reading and responding to written questions submitted by students.
[ii] Alfred Kinsey (1894-1956), best known for his research on human sexuality.

animal, for example, he is in need of reproduction as the other animals too are, and therefore, say, all sexual activity which is directed toward reproduction is natural and that which is not is at least a problem.

I mean, this problem is complicated because there can be people who are perfectly normal but for some reason or other they are unable to generate children. And this creates a certain complication, because in this case the function of marriage for the generation and upbringing of children cannot be fulfilled, and nevertheless it's a valid marriage. This creates certain difficulties but this is, you can say, the exception. The normal is that people marry in order to have children and bring them up, and whatever deviates from that is to a lesser or greater degree a question. Now these deviations may be perfectly innocent, like if people happen to be childless without any fault of their own, and it may also be a serious matter, like the well-known cases, I believe today very well-known cases, of perversion. So in other words, without a guidance by a notion, an understanding of what is man's nature, the whole doctrine would be impossible. Not everything is equally natural, whereas the modern view, the ordinary modern view, is [that] one thing is as natural as everything else. Do you see that? So this is then surely the crucial premise.

Same Student: That clears up the problem.

LS: Well, I spoke of this notion of natural right at the beginning because the whole tradition of natural right, however understood, is based on this notion of nature as specific natures, and this implies from the very beginning that not everything that is, is natural. And the fundamental case is of course the distinction between natural things and artifacts—a chair doesn't grow as a dog grows or a plant grows—and above all, *nomos* or convention, which is not natural, [2]whereas according to the view which is very powerful in modern times, perhaps the predominant view, everything that is is natural. I hope to touch on this modern view when I come to speak of modern natural right. Yes?

Student: Besides these two distinctions which you make between nature and art and nature and *nomos*, is this distinction between nature and perversion equally—

LS: No, that is another distinction. In other words, a perversion is not as such artificial nor as such conventional. Take a simple case. If man has by nature five fingers on each hand: well, sometimes a man is born with four fingers. As Aristotle puts it in general terms, the natural things are as they are not necessarily always, but most of the time. Most people have five fingers, at least, but there are some deviations from that. This kind of deviation is not due to art or convention but due to a defect of nature.

Same Student: My question is—

LS: By the way, the more simple case—we don't have to go to that man with four fingers. Disease is a natural disturbance of man's nature. It is a disturbance in spite of being natural.

Same Student: This distinction between natural and perverted, is it equally as fundamental as the other two distinctions, including these as separate, or is it derivative—

LS: Well, surely one can say if nature is understood as the character of a being, then this is understood in the first place in contradistinction to any artifact as well as to convention; and at the same time of course it is also understood with a possibility of deviations, of natural deviations. Yes, I think we can leave it at that. Good.

Now then I will briefly repeat the main point I made last time and then go on. Now I had asserted that Thomas Aquinas's doctrine of natural law is the classic form of that teaching, and the starting point is indeed that man has natural inclinations, inclinations toward the things which are by nature good, and in particular good for him. And there is a threefold inclination which has an inner order: the lowest is that which man shares with all beings, with all living beings; and the others, the higher ones, are those which are peculiar to him. For example, self-preservation he shares surely with all living beings, but in the case of man, self-preservation is subordinate to the common good because man is by nature a social being.

At this point there arises a certain difficulty to which I would like to draw your attention. In the first part of the *Summa*, question 60, article 5, we read: "It is the sake of the virtuous citizen that he exposes himself to the danger of death for the preservation of the whole commonwealth, and if man were a natural part of this particular society this inclination would be natural to him"; i.e. the inclination toward society is natural but the inclination toward this particular society to which he belongs is due to habituation. It is not natural. Well, this, I think, is of some importance in order to understand it properly. That is clearer, one can say, than it is in Aristotle.

Now the next point, I have to repeat again, is that the principles of natural law are immutable and cannot be dispensed with by any authority, not even by God. The principles of natural law, as far as they concern society, are identified with the second table of the Decalogue: the prohibitions against murder, theft, and so on. The difficulty which we have touched upon concerns the sanctions of natural law. Now there is a natural inclination toward the things which are by nature good, but these natural inclinations are of course not the virtues. The virtues are, generally speaking, those habits which enable man to do what [he is inclined to] in order to achieve these ends. Say, society is the end: the social virtues are those habits which enable men to live in society. So the virtues are founded upon the natural inclinations. The virtues are perfections of man's nature as a rational nature.

The question arises: Is there a natural inclination toward virtue? Now Aristotle surely had asserted that there are people who are by nature inclined toward virtue, but not all. And these are what they would call the good natures—not in the sense of good natures as used now, but men who possess good natures as distinguished from others, and that is also what Plato means. Surely virtues are demanded from men, which is not the same as that there is a natural inclination toward virtue. This distinction which I made here, and couldn't help making between natural inclination toward virtue and virtue as demanded from men, leads to a difficulty which was later on in a way solved, if one can call it a solution, by Kant. Kant abandons the notion of natural inclinations altogether in favor of the moral law. The moral law has nothing to do with men's natural inclination. In brief, the fundamental alternative is this: Is the good life the life in accordance with the nature of man, or is the good life demanded from man? According to Thomistic doctrine it is both.

In order to clarify the question of the sanctions I would like to turn to a later Thomistic author, a very famous man, Francisco Suárez, a Spaniard of the early seventeenth century. Now Suárez had in front of him not only Thomas, who is his guide, but also quite a few critics of Thomas or interpreters of Thomas, and also he was naturally [familiar with Protestantism]. That was the time of the Counter-Reformation, so the great Protestant revolt was of course known to him. His book has the title, *On Laws and God the Legislator*.[iii] He fights against two fronts as far as the natural law teaching is concerned. One front, one school which he fights [against] says that nothing is good and bad intrinsically but only qua commanded or forbidden by God. This is a very old question. [Take] the Platonic dialogue called *Euthyphro*, where this question is discussed in this form: Do the gods love the just because it is intrinsically just, or is the just just because the gods established it as just? This is fundamentally the same question. The other wing against which he [Suárez] fights says the realization that something is intrinsically good or bad is the natural law. In other words, the natural law is the same as natural reason, a view to which you find an allusion, incidentally, in Locke's *Civil Government* somewhere. So no extrinsic cause outside of man's natural reason is required for making it a natural law. You remember that in the *Summa Theologica*, law was introduced as an extrinsic cause of the goodness and badness of human acts. According to this view no such extrinsic cause is needed because man's natural reason alone determines sufficiently what is good and bad. And this view is then also stated as follows, this view attacked by Suárez: the natural law only indicates—points out, *indicans*—it does not prescribe. Even if there were no God, or God were not an intelligent being, which is impossible, there would still be a natural law in this sense, namely, natural law pointing out what is intrinsically good and what is intrinsically bad. Another later Scholastic, also a Spaniard, Vasquez,[iv] probably means the same thing when [3]he denies to natural law the title of law and would speak only of use of right. You remember I spoke of this distinction more than once between natural right and natural law. In natural right the element of command is not necessarily present, whereas when we speak of law it is necessarily present.

Now Suárez opposes these two schools and argues as follows. Reason as reason, i.e., human reason, does not by itself have the proper effect of law. Reason as reason is not, strictly speaking, legislative. Law must go back to a being which possesses *imperium*, the right to command. The cooperation of intrinsic goodness and badness with the extrinsic command constitutes natural law, i.e., the will of God makes the intrinsically good or bad commanded or prohibited. And I think that is a clear statement of what Thomas has in mind, and you see also how it is opposed to both camps: to those who say God's command alone makes natural law, and the others who say no command of any kind is required. Cooperation of intrinsic goodness and badness with God's command constitutes natural law. The natural law is sufficiently promulgated by the fact that is indicates not only the intrinsic goodness or badness of the acts in question, but also that God takes offense at transgressions. In other words, we know by our natural right, by reason, not only, say, that indiscriminate killing is bad, but we know also that God takes offense at it.

In this connection there is a passage in the *Summa* which is helpful for the understanding. In the *prima secunda*, in the first part of the second part, question 71, article 6, *ad quintum*—to the fifth objection—he says: "But the theologian's sin is chiefly considered insofar as it is an offense against God, but by the moral philosopher sin is chiefly considered insofar as it contradicts

[iii] Francisco Suárez, *De legibus, ac Deo legislatore* (1612).
[iv] Gabriel Vásquez (d. 1604).

reason." I think a very revealing and interesting passage. The point of view of rationality is in the foreground of philosophy. The point of view of offensiveness to God is more at home in theology.

Suárez uses a similar distinction, that between sin and guilt. Now let me explain this. The term sin of course does not necessarily mean what is meant to be now, where it is used in contradistinction to crime and a sin is, so to speak, essentially religious and crime is not. Sin, *peccatum*, is a translation of the Greek word *hamartia*, and that does not necessarily mean sin in this emphatic sense but any mistake, error, and especially also error in action. Now this theme of *peccatum*, *hamartia*, error, is the philosopher's concern, but guilt in the sense of an offense to God is the concern of the theologians. So it is clear then, as far as the question of sanctions is concerned, that according to Suárez natural law stands and falls by being grounded in God's will and by being the concern of God. But one thing is the essential relation of natural law as law, properly understood, to God, another thing is the relation to divine punishment; and here Suarez clarifies the situation very much beyond [4]what I, at least, have found in Thomas Aquinas himself.

The transgression of natural law implies that one deserves to be punished, but not more. The actual infliction of punishment is not possible without determination of the quantity and the mode of punishment, and this determination cannot be effected by natural law so that punishment proper goes beyond—I mean, the character of punishment proper—goes beyond natural law. On the basis of the insight implied in natural law there is not more than worthiness of punishment. Everything else goes beyond that.

Now I would also like to say a few words about the question of the changeability of natural law, the question which was brought to our attention by Aristotle's remark in the fifth book of the *Ethics* and to which we have returned more than once. Now I discuss here an example discussed by Suárez: incest between brother and sister. This is forbidden by natural law but it is forbidden not absolutely, and the biblical examples of incest at the beginning—I mean they are not spelled out, but they are obvious from the biblical account of the first generations—show, suggest, that incest between brother and sister may be innocent. Now how does Suárez solve this difficulty? Incest between brother and sister is forbidden insofar as it is damaging to human nature, and therefore contradicting natural virtuousness according to right reason. But this reason ceases and this relation begins to be matrimony in agreement with nature, and hence virtuous in such situations in which there is no other way of procreation of the human race except through such a relation, because if this marriage of brother and sister is undertaken alone for the sake of the conservation of the human race [which is] not possible in the circumstance in any other way, then it becomes a legitimate and moral action.

Now this is exactly, I think, an example of what Aristotle, in my opinion, means when he says there is no natural law prohibition which is not subject to qualification in extreme cases. But I must say I am sure that Suárez would not extend this to all cases. He would only allow it in this particular case of incest between brother and sister and probably not in the case of incest between parents and children, which would be a different story. But this is only an illustration of the reasoning which I believe is underlying Aristotle's otherwise so strange remark that all natural right is changeable.

Student: [Regarding Lot and his daughters][v]

LS: Yes, this was not discussed by Suárez, and I don't think by Thomas. At least I haven't seen it. I believe Locke discusses it in the *Civil Government* somewhere in the first part.[vi] Yes, well, the question would simply be: Was there no other way? This is what the daughters say to him, yes. Now one would have to consider the same thing, that they might have said the thing that is not. But I would say—I mean, I can't possibly dare to speak for Thomas Aquinas, but I would say, as I understand Aristotle, he would say that [in] such extreme cases, say, of shipwrecked people on an island, the prohibition against incest between father and daughter or mother and son would cease. I believe so, because otherwise his unqualified statement that all natural right is changeable wouldn't make sense . . . The principle would be, as I have stated before at an earlier meeting, extreme cases always will allow for exceptions. And it is of relatively little use whether you say, for example, that the man who takes away stealthily what belongs to another man because the only alternative would be starvation—whether you say that is not theft. You know, then the danger exists that it becomes a merely verbal question. One can say: Theft is what? Theft is stealthily taking away what belongs to another man if this taking away is a bad action. But if it is not a bad action we do no longer call it theft. To that extent, you can say, you can maintain the strict prohibition against theft. You know, you can put it this way. But I think it is clearer to say that we mean by theft "stealthily taking away," and this is generally speaking bad; but in extreme cases, as the alternative is starvation, war, and so on and so on, it is legitimately changed.

Student: [. . .]

LS: Yes, well in this case I think it is very simple, because if someone would commit incest when so many other people are available then—I mean, or would you say that someone who is particularly—so unattractive to the other sex that he couldn't possibly find a partner? In that case, we have a case of extreme necessity, but I think—you misstated the problem, by the way, by speaking of sexual relations. The question is procreation. So this limits it also considerably. Yes?

Student: You were saying that there is no sanction without the divine will. Would you say that this would mean that if God didn't exist that intrinsically bad things wouldn't be worthy of punishment?

LS: No, that doesn't mean it at all. It means only they wouldn't be punished; they would be punished only by human beings. For example—well, let us take a simple example: simple murder is punished in society, as you know, by human beings. But is there another punishment? That's the question. Now, that there is a punishment by the conscience is of course implied and stated by Thomas Aquinas, but this raises a difficult question which we discussed briefly last time: Is the conscience necessarily effective as a punisher or tormentor in all men? You know, that is a question which cannot be empirically settled. You have cases of people who were terrible criminals who did become tormented by their conscience because they said it or it came

[v] As noted by the transcriber.
[vi] *First Treatise*, sec. 59.

out, but in other cases we don't know. There are people who are not known to anyone to have committed atrocious crimes and may, for all we can know, live happily ever after. You know, we cannot know it, and therefore this is always a difficulty. But Locke later on asserts with the greatest definiteness that the conscience is not generally effective—I mean, in many people, but not in all.[vii] But the question of divine punishment is no longer something of which natural reason can say something, if I understood Suárez correctly. Natural reason can say it is worthy of punishment, but punishment proper presupposes of course the determination of both the quantity and the quality of the punishment, and this natural reason can no longer know.

Student: [. . .]

LS: No, the belief in God is absolutely essential. That Suárez I think indicates by the title of his book, *On Laws and God the Legislator*, and the same is true in Thomas. But the other school, the one wing which says there is no natural law proper because natural reason alone cannot say more than whether that actions are good or bad, and cannot know that they are forbidden or commanded, these people say—to make quite clear what they mean: the natural law, as they understand it, meaning the rational insight into goodness and badness, would be valid even if there were no God. This statement, "Even if there were no God," is well known, is best known from Hugo Grotius who, at the beginning of his work on *The Right of War and Peace*, uses the same expression. And there are some people who have said: Now here is the beginning of modern natural law, because medieval natural law was always theological, and here you have the complete divorce of natural law from any theology, revealed or natural. But unfortunately this was said centuries before by some Scholastics, and therefore it cannot very well be the beginning of a radical break with—Grotius is fundamentally a traditional thinker . . . Yes?

Student: [Question regarding rewards and punishments in the Thomistic teaching in contradistinction to their absence in classical natural right teachings.][viii]

LS: Yes, but this difficulty I'm afraid exists also in Plato and Aristotle because—what is the argument of Plato's *Republic*? Is justice choiceworthy for its own sake, or genuine virtue choiceworthy for its own sake, or not? And the answer generally speaking is [that] it is choiceworthy for its own sake. But what kind of justice, what kind of virtue? Answer: the philosopher's virtue, philosopher's justice. So what happens to the nonphilosophers? For the philosophers, their justice as they understand it is choiceworthy for its own sake: intrinsically pleasant; no need for any other thing. What about the nonphilosophers? Well, the nonphilosophers derive benefit from their justice—well, simply in a well-ordered society because there the decent people are assisted by the law and those who are not decent are not assisted, to say the least. But this is not enough, because an extremely clever man can behave externally decently and can be fundamentally an unjust man, and he can get all the decorations and distinctions in the world.

You know, I mean, you must not believe—there was once a French comedy about thirty or forty years [ago] about this sadistic version of the problem of justice. A very harmless tutor educating

[vii] See Strauss, "Locke's Doctrine of Natural Law," in *What is Political Philosophy? and Other Studies* (Chicago: The University of Chicago Press, 1959), 204-05.
[viii] As noted by the transcriber.

the son of a very lost woman, an illegitimate son of her[s], and she was allied with gangsters of all kinds, corrupt politicians; and this innocent man comes and tells this boy that the good men become presidents of the Republic, presidents of banks, deputies, and so on and so on, and the bad men go to jail and to the gallows. And then he observed how this gangster who corrupted the municipality of Paris very successfully lived in great pleasure, honored, and then he had to revise his moral principles. So in other words, the justice which we get among human beings, while I believe it is not as bad as some misanthropists say, is surely very imperfect. There is no doubt about that, and therefore Plato suggests in the *Republic*—you know the myth at the end—rewards and punishments after death. You see, only what in Plato is mythical, which does not necessarily mean untrue—that needs a very long argument—but clearly not knowable, not really knowable, this is clear, becomes accepted, and on the basis of belief, faith, which is not the same as myth. Yes?

Student: But isn't this also a dilution of natural right because these men who aren't philosophers—they're not men—that is, they don't achieve the highest end of men. So because they come down from that, right, natural right, has to be diluted to that extent.

LS: No, that is another consideration. Natural right has to be diluted because this natural right in the strictest sense, which is impossible except for the philosopher, is not applicable to society at large. That is the reason. That has nothing to do with the question of sanctions. There may be a connection, but this has not yet been made clear by you.

Student: Did Aquinas say, then, that the philosopher—

LS: No. The philosopher does not play this role in Thomas Aquinas, because ultimately for him the crucial distinction is that between orthodox Christians and people who are not orthodox Christians. Yes, Mr. Butterworth?

Mr. Butterworth: [Question as to whether the main thrust of Strauss's interpretation of Aristotle's natural right teaching is based on the discussion in the fifth book of the *Ethics*][ix]

LS: Of my argument, yes.

Student: [Question about Aristotle's statements in book 2 of the *Ethics*][x]

LS: Yes, because there he doesn't speak of—first of all, from a quite simple [. . .] reason: there he does not speak of natural right at all. He indeed says these actions are simply bad, and you cannot, for example, regarding theft raise the question which you can raise regarding borrowing money, how and when can it be done decently, and how and when would it not be done decently, because it would be in all cases indecent. This is clear, but this does not dispose of the other consideration which I mentioned. For example, if you take the case which I gave, say, of this whole commonwealth is in danger if the king dies without issue and so you [have] to tell her this is not, so to say, a dirty action.

[ix] As noted by the transcriber.
[x] As noted by the transcriber.

Student: Except for the fact that he said explicitly that under no—

LS: Yes, well, then I can give you an easy reconciliation. Then in this case this would not be adultery because [by][xi] adultery is simply meant the satisfaction of one's desires without any regard for the rights of others, whereas here this is not strictly speaking a satisfaction of desires; it is an action committed for the maintenance of the commonwealth. That would be something different.

Student: Would this then be equal to the distinction between killing one's mother, because one thinks that he's forced to do it or simply taking the life—

LS: No, that's something different. Then if you say if you kill your mother—it's a terrible case—because you think she is a bandit entering your apartment in the dark of the night, you just shoot. I mean, assuming that this would be excusable, it would be excusable on the ground that you did not intend to kill your mother but you intended to kill someone whom you had reason to believe was threatening your life. That's clear. Ignorance regarding a fact—which can be a perfect excuse; no punishable action or no bad action proper is involved. The appearance of a bad action is created only because we do not take into consideration that the man was unable to recognize a true state of things. That takes away the guilt. That is different. Yes?

Student: I somehow missed the connection between the sanctions and virtues that you mentioned some time ago.

LS: The virtues are good habits, praiseworthy habits, and they can be choiceworthy for their own sake; and then the question of sanctions for them, or rather rewards for the virtues or punishments for the vices or vicious actions doesn't arise. But there are quite a few people who are not willing to act virtuously unless they get a reward for it. In other words, they do not genuinely believe that virtues are choiceworthy for their own sake. Only in that case does the question of sanctions arise. Now when we speak of laws we are somehow compelled to think of sanctions, as Suarez admits, only he says natural reason cannot say anything about the sanctions for the natural law. In other words, the relation between virtue and vice on the one hand, and sanction on the other, is that between the intrinsic goodness of virtue or intrinsic badness of vice on the one hand, and of extrinsic reward and punishment. That's the connection.

Student: How does natural law become derived out of an understanding of man's nature?

LS: Well, let us take the simplest example. If man is by nature a social being, then he is by nature ordered toward society, and this is in itself something which is prior to any virtue and vice, and prior to any law. Man is by nature a social animal. His very antisociality proves his sociality. I discussed this on a former occasion.[xii] I don't know whether you were present. So, for example, if man is antisocial out of desire to be the first, this means of course—this is possible only in a being which is fundamentally concerned with others of the same species, which is fundamentally social. But if man is ordered toward society, then he must fulfill certain conditions in order to be a social being. These would be the social virtues. In other words, all habits which

[xi] The word in brackets was inserted by the transcriber.
[xii] See session 10.

make possible social life are good, commanded by natural law, and all those habits and actions which by themselves would render society impossible are vices and forbidden; the action is forbidden by natural law. Yes?

Student: Does that imply that the preservation of man's nature is *the* highest good?

LS: Yes. There is a perfection of human nature pointed to by man's nature, so that if man is a rational animal, same as a social animal, then the cultivation of his reason is his virtue and the neglect of his reason or the perversion of his reason is a vice. That is what is meant by that. Or take another case we discussed before: procreation. All so-called sexual activities which are not directed toward procreation are, to say the least, questionable activities. Most of them may be bad, whereas they are that which human nature is directed toward. [5]This is what I meant when I referred from the very beginning of this course to the teleological understanding of nature, I mean according to the simple view [that] every being, every natural being, has an end toward which it is ordered. Now this is today somewhat complicated because of the physics, modern physics, but in the case of man especially and to some extent also regarding the other animals, it is still easily intelligible. The question arises—one can see the necessity indirectly—that is a long task but one can do it by considering the alternatives. Let us forget about a natural end of man. Let us deny it on the grounds which are now so common, which are very, very common for about three centuries, that there are no natural inclinations. Or differently stated, we cannot make a distinction between good and bad inclinations. A man may have the inclination to drink human blood, and that is not distinguishable from an inclination to be kind to other human beings. Both are equally natural. Then you have to find another criterion for distinguishing between good and bad action, and you have to find a basis for that. Is there any other possible basis than human nature for that? I will take that up when I come to speak of modern natural right. But here, to repeat, in the tradition which culminates in Thomas Aquinas, the teleological understanding of human nature is absolutely crucial. Yes, Mr. Boyan?

Mr. Boyan: [Question regarding a natural inclination toward freedom][xiii]

LS: Yes, well, I would suppose it—I would assume that this is subordinated [6][for] Thomas. Well, you must distinguish—freedom has many meanings. Now freedom of the will belongs to man by nature, and therefore man cannot help being free, having a free will. This is not what you mean; you mean political freedom. Well, I think that Thomas would regard this as subordinated to the social desire, the desire for living in society, and this means a society cannot be tolerable except if it is a society ordered by law, and in this context freedom would come in. No, and the mere fact that Thomas recognizes the legitimacy of slavery would seem to show that he cannot have recognized an unqualified natural right to freedom.

Student: When I asked this question regarding Plato, you responded by saying Plato recognized freedom as a problem. I wonder if Thomas recognized it even as a problem.

LS: Of course the problem cannot exist for Thomas in the same manner, because Thomas does not measure all the rights and duties by the philosopher. The problem would be in philosophic terms similar to what it is in Aristotle. Aristotle does not start form the premise that the only

[xiii] As noted by the transcriber.

right order is that which would obtain among philosophers. So Thomas would, I think, take it for granted that freedom, i.e., not being a slave, is a normal condition for men. But he would not, on the other hand, since he admits the legitimacy of slavery—in one way even going beyond Aristotle by not seeing any difficulty in conventional slavery, what Aristotle calls conventional, i.e., people who are enslaved because they have been taken prisoners in war—he would say this cannot, surely not have the character of an inalienable right, if that is what you mean. But that a free society is in the simple political sense ordered by law, and where the people, the common people, are an important part of the legislative body, this he said. You know, in the question dealing with the judicial laws of the Old Testament he states this: that this order he believes he finds there—kin, elders, and the people, a mixed regime—is the best, and this means of course very much of what was traditionally understood by political freedom. But the question which we always connect with that is: Can any human being, except on the basis of crime clearly defined by law, be deprived by his freedom? And here he says yes, because accepting the Roman law teaching that slavery is a benefit introduced by the law of nations in order to prevent the killing of all prisoners taken in battle. Well, do you want to say something on this subject? All right. Then I give you the word.

Student: Is the distinction between the concept of natural right and the concept of natural law based upon this business of the sanctions?

LS: Yes. More precisely, on the presence or absence of command. More precisely, but indirectly on the sanctions. That's really the last question now—

Student: [Asserting that in the Thomistic treatment of freedom the lower sort of men have less freedom][xiv]

LS: Well, as authority, sure. But Thomas teaches explicitly that even without sin, in the state of innocence, there would have been natural inequality. There would not have been slavery, but there would have been an order of higher and lower within the human race. That he teaches explicitly. I mean, in this respect that is just the Platonic–Aristotelian view. In other words, the inequality among men is to some extent natural. That does not mean of course that the inequality we actually find agrees with the natural inequality—you know, that the kings deserve to be kings and the members of the lowest class deserve to be in the lowest class—this is of course not the case because many injustices happen, but that there is a hierarchy within the human race, a natural hierarchy, Thomas asserts, a hierarchy antedating any sin. According to another Christian teaching, these inequalities are a consequence of sin. Thomas does not accept that. Now I'm very sorry, I must go on now. We'll make another recess, a break, in a short while.

Now Thomas's doctrine as a whole presents itself as a synthesis of revelation and Aristotle. The principle is grace perfects nature; it does not destroy it. Nature is what philosophy knows, and grace is what is known through revelation. There is no contradiction: grace is the perfection of nature; it does not destroy it. And the natural order as Thomas sees it is very generally speaking on the whole as Aristotle saw it. Therefore Thomas can accept Aristotle's *Ethics* with this understanding: that Aristotle deals here only with the happiness or felicity of this life. He does not speak there of the felicity in the afterlife, which is of course much more important.

[xiv] As noted by the transcriber.

Now this harmony of Aristotle and the Christian teaching could not be achieved without a genuine conflict with Aristotle, because Aristotle as it were opposes any supplement to his teaching based on revelation. He regards that as sufficient. Aristotle's teaching is not open to be supplemented by revelation, and so the conflict must appear at one point or the other. Now the point where Thomas makes it quite clear [7]concerns the question of creation. Is the visible universe eternal—Aristotle's teaching; or has it been created out of nothing—the biblical teaching? Thomas qualifies this considerably so that it doesn't appear in this sharp form. Thomas believed that it is possible to prove by natural reason that the universe originates in the will of God. But the question arises: Does the world emanate as it were from the will of God eternally, or did it come into being at a given time? And this question of course affects quite a few questions in moral philosophy more or less directly.

Now being a synthesis of Aristotle and the Bible, the Thomistic doctrine was exposed to attacks form both sides, from the side of antiphilosophic theologians and from the side of antitheological philosophers. Both attacks endanger natural law in particular. Now the extreme theological view would say of course that nothing is prohibited because it is intrinsically evil, but [that] whatever is evil is so only because it has been prohibited by God. The only guidance man has is by divine revelation, not by his own reason.

Now I would like to speak of two non-Thomistic thinkers, Christian thinkers, none of which is an antiphilosophic theologian but while one of them clearly is an antitheological philosopher. I would like to say first a few words about the natural law teaching of Duns Scotus, making it clear that I do not know Duns Scotus from the sources. That's the only case where I depend on other people, and I do this with a certain uneasiness. Duns Scotus, the Scot Dun, fourteenth century, late fourteenth century.[xv] Now what does he say? The starting point of Thomas, we recall, was this: the will of man tends naturally toward happiness or felicity. This is of course also the Aristotelian view: man's will tends naturally towards felicity. Duns denies that, on the ground of the radical freedom of the will. There is no natural tendency toward felicity, and in a way this destroys the whole basis of that teaching. This emphasis on the freedom of the human will, that there is no natural end [. . .] corresponds in Duns's teaching to a stress on God's will in contradistinction to his reason or intelligence. Nevertheless Duns Scotus teaches that there is a natural law. *The* principle of action and hence *the* command of natural law is to love God, for God is the highest good and this is knowable by natural reason. Love God; do no love any creatures. That God is the highest good does not depend on Good's will. God cannot will not to be the highest good, whereas everything else can be good only by virtue of the divine will, and natural law can only be that which does not depend on the divine will merely. Man's happiness is not as such a good because it is not the highest good; it's a questionable good. The natural good things, more particularly the nature of man,[8][do] not supply any guidance. Love of God must be completely divorced from concern with my felicity, because in that case I love God for my sake. I love the highest good for the sake of a questionable good, which is absurd. Love of God implies, indeed, the willingness to comply with God's will, whatever that will may be, and that will can be known only through revelation. Only the commandment to love God above everything else is strictly the command of natural law.

[xv] John Duns (1266-1308).

But when one reads this, one can raise the question very well, especially on the basis of Thomas's remarks on this subject: Can this be known to natural reason? There is another difficulty mentioned, apparently, by Duns Scotus: this command to love God is always valid, but it is valid *semper* but not *pro semper*. Now what does that mean? It is always valid in itself, but it is not valid for every second, so to speak. Now this is a distinction which these later Scholastics make. You can easily see the prohibition against murder is always valid, *semper*, and is valid also *pro semper*. There is not a single minute where you can murder. Now then the question arises: If the command is to love God, but you can as it were not love God in every second, is it sufficient to love God once, so to speak, once in one's life in order to satisfy, to fulfill the command? Scotus draws the conclusion that the only natural law strictly understood is not to hate God. This is valid *semper* and *pro semper*. But on the other hand, Duns Scotus doesn't seem to be certain whether that forbidden act of hating God is possible at all. So this is not very clear. Yet what about the love of neighbor, the content of the second table of the Decalogue? These commandments belong to natural law in the large or loose sense of the term, which means they do not follow strictly from *the* principle, the prohibition against hating God, but they are very much in agreement with the principle without necessarily following from it.

Now I would like to illustrate this distinction between "necessary" and "much in agreement" by an example given by Duns. If peaceful living together is good, nothing follows with strict necessity regarding communism or private property, because people can live together both communistically or on the basis of private property. But private property agrees more with peaceful living together than does communism. Hence, in the same way, to love the neighbor as a creature of God is more consonant to the love of God than not to love the neighbor. Through loving the neighbor, one loves ultimately only God himself, meaning as willed by God. I found a strange remark which I'll read to you which he makes when speaking of the indissolubility of marriage.[xvi] He says it was necessary to establish this indissolubility also by divine positive law, which would seem to mean it is commanded by natural law, but it is also established in addition by divine positive law, because men obey less to the law of nature than to God commanding because they fear less their own consciences than the divine authority. Now this, taken by itself, would seem to suggest this view: that the natural law has no other sanction than a man's own consciousness as distinguished from a divine precept. But this is much too—I mean, I myself know much too little to say more about it. The key point is only that here is a natural law teaching which limits the natural law to one single command, or perhaps only to one single prohibition, against hating God, and all other commands do not strictly speaking belong to natural law.

The other post-Thomistic thinker of which I would like to say a few words, whom I happen to know from my own readings, is Marsilius of Padua, in the fourteenth century.[xvii] Now here is the most radically antiecclesiastical writer of the Middle ages, a so-called imperialist. In the Middle Ages imperialism means to be on the side of the emperor, in opposition to the papalists, those on the side of the Pope. Accordingly, his work—the chief work is called *The Defender of the*

[xvi] See *Duns Scotus on the Will and Morality*, trans. and ed. Allan B. Wolter, O.F.M. (Washington, D.C.: Catholic University of America Press, 1986), 305-11.

[xvii] See Leo Strauss, "Marsilius of Padua," in *Liberalism Ancient and Modern* (University of Chicago Press, 1995), 185-202. This essay also appears in *History of Political Philosophy*, edited by Leo Strauss and Joseph Cropsey, 3d ed. (University of Chicago Press, 1963, 1972, 1987).

Peace—was of use very much during the Reformation. Now he bases his antiecclesiastical teaching of course on the New Testament, and he tries to show that there cannot be any ecclesiastical power in any sense on the basis of the New Testament. Well, I must limit myself here to his philosophic teaching. His philosophic teaching is based on Aristotle's *Politics*, but he interprets this in a very strange way. He introduces the notion of the human legislator, who is necessarily the people in contradistinction to the prince or government, a distinction which reminds quite justly of Rousseau's distinction between the sovereign and the government, and it is very strange to find such a doctrine or something reminding of this doctrine in the fourteenth century. So in other words, at first glance it appears to be much more democratic than Aristotle is. He isolates Aristotle's democratic argument given in the third book of the *Politics* from the context, which leads to very strange interpretations. I explain this as follows. Aristotle's aristocratic teaching favored the clergy, once one accepts the notion of the Christian commonwealth. In the Christian commonwealth, the laity is the *demos*, the *populus*, the people; and therefore the Aristotelian argument, simply applied to the Christian commonwealth, leads to an admission of the superior power of the clergy.

Now Marsilius transforms Aristotle into a populist teaching in the interest of his anticlericalism. Not only scripture, but also reason, speaks against the rule of the clergy because reason demands that power be in the hand[s] of the citizen body, i.e., of the laity. Well, apply it to the Church. Marsilius makes use, considerable use, of Aristotle's teaching regarding priesthood, which he accepts as in the main correct, for according to Aristotle, at least by implication, priests have no power to rule in any sense and their only function is to teach. Now Aristotle of course never says so, but in a deeper sense Marsilius is not entirely wrong, because the only part of the commonwealth of which Aristotle speaks which could have the function to teach is the priesthood, no other part. Negatively stated, the philosophers, and that means in the older language, also the men of science, are not a part of the commonwealth. When Aristotle enumerates these parts philosophers never occur. Philosophers are not a part of the *polis*. That is Plato's view, that they are a part of the city, not the sober Aristotle's view.

Now let us hear Marsilius about natural law. That is in [the] second part, second treatise we can say, chapter 12, paragraphs 7 to 8.

"7. There is also another division of right, and properly of human right, into natural and civil. Natural right, according to Aristotle in the fourth book of the *Ethics* [he means the fifth book—LS] the treatise on justice, is that statute of the legislator with respect to which almost all men agree that it is honorable and should be observed. [Natural right is a statute of the legislator—LS] Examples are that God must be worshiped, parents must be honored, children must be reared by their parents up to a certain age, no one should be injured, injuries must be lawfully repulsed [or may be lawfully repulsed—LS], and the like. Although these depend upon human enactment, they are metaphorically called "natural" rights because in all regions they are in the same way believed to be lawful and their opposites unlawful, just as the acts of natural things which are devoid of will are everywhere uniform, like fire, which 'burns here just as it does in Persia.'

"8. However, there are some men who define natural law as the dictate of right reason in practical matters, which they place under divine right; for everything[xviii] done in accordance with divine law and in accordance with the counsel of right reason is lawful in an absolute sense; but not everything done in accordance with human laws, since in some things the latter fall away from right reason. But the word "natural" is used equivocally here and above. For there are many things which are in accordance with the dictate of right reason, but which are not agreed upon as honorable by all nations, namely, those things which are not self-evident to all, and consequently not acknowledged by all."[xix]

So this is the key passage of Marsilius regarding natural law. Now what does he say? How can we summarize it?

Marsilius denies that there is natural law properly so-called. He takes it for granted that reason knows no other legislator than man, and hence that all laws properly so-called are human laws. Reason is indeed capable of discerning what is honorable and what is just and what is of advantage to society, but such insights are not as such laws. Besides, they are not accessible to all men and hence not admitted by all nations. For this reason they cannot be called natural. They lack the universal recognition which a natural law would require. But on the other hand, there are certain rules regarding what is honorable or just which are admitted in all regions and are in addition enforced almost everywhere. These rules can therefore be called metaphorically natural rights. They are not strictly speaking natural rights because they are ultimately based on human enactments, but in a loose way, in a metaphoric way, they can be called natural rights. In spite of their being universally or generally admitted they are not strictly speaking natural. Why? Because they are not dictated by right reason. In brief, his argument is this: What is universally admitted is not rational and what is rational is not universally admitted.

Among the rights which can be metaphorically called natural rights, Marsilius mentions the rule that human offspring must be reared by the parents up to a certain time. Why is this not unqualifiedly rational? I would say: Since Aristotle had held that no deformed child should be reared, and therefore the simple rule is not rational. But more generally, according to Marsilius wars are by nature necessary, wholly independently of human ill will, in order to prevent overpopulation. Now if this is so, if this is the primary reason for war, not the bad will of governors or the injustice of rulers, then the distinction between just and unjust wars loses much of its force, and this grave qualification of the field of justice is bound to have effects also within society. The universally admitted rules of right are not rational since there exists the natural necessity to transgress them, and therefore they are only qualifiedly valid. In other words, what is ordinarily understood by natural right are generally accepted conventions. This convention arises separately in each society because of fundamentally the same necessity which arises whenever men live together; it is not due to a universal convention of the human race. But this does not do away with its conventional character. I think this is what Marsilius means. Now this is all I wanted to say about these things. Yes?

[xviii] In original: "and consequently everything"

[xix] Marsilius of Padua, *The Defender of Peace, vol. 2: The* Defensor pacis, trans. Alan Gewirth (New York: Columbia University Press, 1956), 190-91.

Student: [. . .]

LS: You can say, yes. Yes. All the principles of right which are of general intelligibility and usefulness are conventional. Yes. The rational right, [9]what human reason would discern as wise and just, is as such not universally valid because most men would not see it. That he seems to say.

Student: [. . .]

LS: Yes, it reminds of the Platonic teaching, [10]without any apparent connection with the Platonic teaching. Yes?

Student: Would Aristotle say that natural right is that which is universally valid—that is, the same thing that is the dictate of practical reason. In other words, would all dictates of practical reason be universally valid and therefore natural right for Aristotle? Would the two be one and the same?

LS: Well, let me—

Student: Would it be possible for some dictate of reason not to be natural right because it's not everywhere—

LS: Well, it must not be taken in a pedantic way. The exception, you can say, proves the rule. But Aristotle would say: Why do tyrannies[11] have to be so particularly bloody and cruel, and why do they not last—why do they last ordinarily not very long? Because they contradict certain principles of human living together which are principles of natural right.

Student: In general, the two go together for Aristotle.

LS: Which two?

Student: All dictates of practical reason would be evident. You would see them. They would be everywhere in force—

LS: Yes, well, that is a complicated question because there are underdeveloped nations, as Stalin would call them, you know, I mean people who have no development of sciences and art, and therefore also all the more refined understanding of human goodness would be absent. To that extent, it is not universal. But Aristotle would say wherever a man of practical wisdom, high practical wisdom, lives he would act according to these principles. That he would say. Yes? Mr. Erickson.

Student: [Regarding the distinction between the doctrines of Marsilius and Hume][xx]

LS: Well, cutting out some of the terms used by you, if I may be permitted to do so, I can understand. But Hume does not, I believe, explicitly speak of "metaphorically." He says—

[xx] As noted by the transcriber.

Student: No. They are arbitrary, they are conventional.

LS: Yes. He says, in other words, if I remember well, certain rules may be called natural.

Student: Yes, I think I can quote him literally. In the sense that they are inseparable from a given . . .[xxi]

LS: Yes. I think I would agree with you. Contrary to most present-day admirers of Hume, I think that Hume for all practical purposes admitted a natural right. That is quite true. Yes, but there is one absolutely striking difference. For Hume everything centers around property, and Marsilius didn't speak of property except by implication. This is quite true. They agree by saying in a loose way it is possible and even necessary to speak of natural right, but the content of the natural right is so different. We must not forget that. Well, that is a parallel problem to that raised by the fact that Marsilius's political teaching regarding the human legislator and the prince reminds so much of Rousseau that one is tempted to say here in the fourteenth century you have Rousseau's teaching. And closer inspection shows that this is not so, that this was as it were a temporary device for Marsilius in his fight against ecclesiastical power to ascribe to the laity the ecclesiastical power, and therefore he had to have an underpinning in a democratic teaching regarding civil society. It is not seriously meant, in other words, here.

Student: [. . .]

LS: I question the facts. I do not know that Hume never uses the word metaphorically. I would be inclined to believe that he does use it, but this is a matter of mere fact and nothing like having another look at it. I don't know it offhand, but I would assume that Hume would use it as well as everybody else and I'm sure in some of the essays when he speaks of taste and of art he cannot have helped, have made some remarks about the use of metaphors and so metaphorically. I wouldn't go so far.

Student: [. . .]

LS: But did Hume ever say that taste or art, for that matter, is the same as science? No. This remark which you alluded to refers to science. No science without [. . .]

Student: [. . .]

LS: Well, now may I suggest this practical consideration: We cannot now take up Hume. Yes? Good. Yes?

Student: Do I understand you correctly in your reply to Mr. Erickson that there is some sort of necessary relationship between Marsilius's anticlericalism or his anticlerical intentions and his denial of the natural law?

LS: Not directly. No, no.

[xxi] The transcriber notes that the rest of the student's comment is inaudible.

Student: [Regarding establishment of the democratic thesis][xxii]

LS: No, in a wider sense. Marsilius is of course officially a Christian—I mean, he argued on this basis—but in fact he is an Aristotelian of that camp called Averroeism—this is, by the way, generally known, you know—that spread from the faculty of arts in Paris, [Siger of Brabant and Boethius of Dacia][xxiii] and such people. I mean, on the basis of this damned Aristotelianism of the Averroists he had no use for natural law in the Thomistic sense. That is not an Aristotelian teaching proper. Therefore the question becomes all the more urgent: Why does he not reproduce the Aristotelian teaching that there is an unmetaphoric natural right which may be changeable but which is surely natural? This is the real difficulty which Marsilius poses.

Now I do not have my text here. It is of course no explanation, but I think he simply follows the Averroist interpretation, and that means only pushing the question back, because Averroes surely admitted that, say, commutative and distributive justice, these principles, are natural, naturally right and not conventional. But I believe the question comes up when you put it in this form: Are the rules without which a society is not possible, the overall principles, are they natural? I mean, not limiting ourselves to justice in the narrow sense, commutative and distributive justice. And I think here the question comes in, for example, the worshiping of God, as he puts it—which Aristotle, as we have seen, implied also in his statement on natural right in the fifth book of the *Ethics*—and here the question comes in: To what extent is the worshiping of God a demand of natural reason, the worshiping of God as distinguished from knowing God? You know, then you come up immediately against the question: Must it be worshiping of God, *the* true God, alone? That's the practical, crucial question. Or of any gods? Now if you say "any gods," as Aristotle would have meant, then of course the question of truth and untruth comes up immediately. We have discussed it in another connection. And then it cannot be, strictly speaking—in one sense it is rational; in another sense it is not rational. Do you see? In one sense society requires worship, but since this worship if understood implies certain assertions regarding the gods which assertions are not necessarily true, to that extent it is not rational.

This, I believe, is the major point why these Averroists, in particular Marsilius, hesitate to speak of natural right simply. I believe, as far as I know from other writers of this time, they would have had no hesitation to say that the principles of commutative justice are sound principles and not conventional, but then the difficulty which arises on that score is this: What about the cases of conflict between commutative justice and the preservation of the commonwealth? [12]And then you have two principles of justice: the common good, in the sense of the preservation of society; and the specific rules of justice. Which has the right of way? And it is very hard to [say]—any decision in general terms is untenable because one cannot possibly say how far a society must go in being strictly just in the relations of citizens. You know? And then the point arises where this becomes impossible. I believe considerations of this kind are underlying it. I mean, Averroes was of course an Islamic philosopher, and in this Islamic tradition natural right and natural law simply do not occur. I mean, although they have Aristotle, [13]they did not have Cicero and the Roman law. Surely this was completely absent. And I think one must see Marsilius as one of the most extreme representatives, and surely the best-known representative, because [. . .] his books

[xxii] As noted by the transcriber.
[xxiii] The transcript has a blank space here.

were printed, to the extent to which they are printed, only in our century, you know, whereas he was printed already in the sixteenth century, if I remember well, at the command of Henry VIII after his break with Rome, and it was translated into English.

Now I would like only to indicate what I plan to do. I would like to turn next time to modern natural law, meaning this natural law which was so powerful in the seventeenth and eighteenth centuries, and we must see, we must make clear that there is a fundamental difference between the natural law of the seventeenth, eighteenth century and that of premodern natural law. I plan to take up this subject next Monday. [xxiv]

[1] Deleted "if I—just."
[2] Deleted "and."
[3] Deleted "he says—when."
[4] Deleted "that."
[5] Deleted "I mean."
[6] Deleted "from."
[7] Deleted "is [or]."
[8] Deleted "does."
[9] Deleted "that."
[10] Deleted "yes."
[11] Deleted "do they"
[12] Deleted "you know."
[13] Deleted "but."

[xxiv] The transcriber notes: "In the last four lectures of the course, Dr. Strauss repeated material on which he has already written or lectured in substantially the same form and content. Therefore, these lectures will not be transcribed." The audio recordings of these sessions have been remastered and transcribed, making the transcript of this course complete.

Session 13: November 19, 1962

Leo Strauss: [In progress] "—Aristotle, Cicero, Aquinas, and Hooker is a basically conservative doctrine, supporting the status quo, and allowed only for moderate change.[i] Does this mean that a person who on moral grounds wishes to alter drastically the status quo must reject classic natural right in favor of Lockean natural right or some other theory? Or may classic natural right also be the grounds for drastic changes, even violent revolution?" This point is well-taken. I will have to take it up in some way or the other today. That is surely a striking difference between the modern theories and the premodern theories. But quite a few things will have to be cleared, to [be] clarified, before one could give an answer to this question. Now if you take the simplest case: an absolute bad regime, tyranny, there was never a question that it is morally possible and even necessary to abolish tyranny. There was no question about that. But regarding altering fundamentally decent regimes, not. The peculiarity—one would have to go into the question, what is revolutionary? What is that? One has really to start from the beginning.

Now what does revolution originally mean? What you mean by revolution was formerly called rising or civil war or something of this kind. Revolution meant revolving. The title of Copernicus's book is *On the Revolutions of the Celestial Bodies*.[ii] That is revolution. That revolution should mean a change which brings about something radically new is a very novel meaning, number one. This indicates that the notion of revolution which you have or which is now very general is connected originally with the conception of progress: that something which hitherto did not exist at all would come into being. [Something that] never existed. This is another item. [1]To that extent, the question of revolution is really not the question of change or even violent change but bringing into being something which never existed before, at least in the country in question. If you abolish tyranny by a successful rising, this may merely restoring the relatively decent regime which antedated the tyranny. But in the modern notion of revolution it is meant to establish a regime which never existed before, at least in that country. So what is implied is a new view, in the first place, regarding innovation. Innovation. Is innovation simply good? Common sense would of course say, no, not simply. If it is a change for the better, it is good; if it is a change for the worse, it is bad. But when the practical question arises, Is innovation *as such* not a very dangerous thing, even if it would be a change for the better? And the tradition[al] answer is: It *is* very dangerous. It may be good, salutary, but it is something which is in principle dangerous. This destroys the continuity, we can say, and this was based on a rather apprehensive view regarding change. And the modern view regarding change is very sanguine, and that has to do with the fact that it is somehow believed that without man's doing, there is a kind of guarantee that the march of human race is an upward march, progress.

These things will have to be taken into consideration. In the present-day notion of revolution these things are simply—how should I say?—have become embodied, crystallized, and even become rigid, and they are no longer necessarily [the] subject of reflection. There is no question that modern natural right is much more an instrument of radical change than the earlier view, and to some extent one can say that modern natural right came to its climax in the French Revolution.

[i] Strauss reads a student's question, submitted in writing.
[ii] *De revolutionibus orbium coelestium* (1543).

And there is no corresponding event in the history of natural right previously. Now, Mr. Weissbrod, did I make my point clear enough for the present purpose?

Mr. Weissbrod: Yes.

LS: Good. As I say, we will take it up in another context.

Now I would like today to make the transition from premodern natural law to modern natural law. Now when speaking of such a thing, I imply that there is an essential difference between premodern and modern natural law, or more generally stated, there is an essential difference between modern political philosophy and premodern political philosophy. Still more generally, the question concerns the proper division of the history of political philosophy into periods. After we somehow assume that there is such a history, then the question is inevitable, as in every historical question: Are there not legitimate divisions of that process into periods? Now there is a great variety of opinions in this respect. There is a great variety of opinions in this respect. There are people who say that the decisive event was the emergence of Stoic philosophy, the break with Aristotle, or that Christianity constituted that break. Others say that Marsilius of Padua is the first modern thinker, and many more views into which we do not have to go. How can we make a distinction without being arbitrary? And I would say the most cautious procedure would be to disregard one's own impressions altogether and to take one's bearings by what the actors themselves thought. The actors in our case are of course not generals, but the thinkers.

Now, in other words, who is the great thinker who effects a radical break? It would seem to be reasonable to assume that a man who effects such a break will know what he was doing. In other fields it is perhaps possible for a man to make a powerful, radical change without being aware that he did it. I do not say that it is possible; I say only that it may be possible. In the case of the great thinkers, it is absolutely impossible that they would so such a thing without being aware of it. Who is the great thinker who said with clarity that he was a radical innovator? Let us take an example. When Dante speaks in his *Monarchy*, at the beginning of his work he says that his work is something unheard of. Unheard of. No one has written about universal empire in the way in which Dante did. But Dante does not say that all his predecessors were mistaken. On the contrary, his whole work is based on Aristotle. Aristotle is for Dante *the* philosopher.

Now when we look then at the great galaxy of writers, there can be no doubt who will win that particular race, namely, Hobbes. Hobbes was a man who expressed more clearly than anyone else that he has effected a radical change in political philosophy and that *all* his predecessors were mistaken, not in a little point but fundamentally. I remember one remark about his book *On the Citizen*. He says *On the Citizen* is wholly new, meaning everything in it is new. All earlier political philosophy is wrong. All earlier political philosophy according to Hobbes was founded by Socrates. And this whole tradition, which was still powerful in his time—as Hobbes says, "In my time the greatest authority is still Aristotle"—whom he rejects, of course.[iii] Now what was the error of the whole tradition? There is a simple formula of Hobbes, which is to begin with wholly unintelligible. He says that they all are anarchists. Anarchists. Plato and Aristotle should be anarchists. Now what does he mean? It is not quite so unreasonable. They all said that ultimately reason makes the law, whereas Hobbes says not reason but authority makes the law.

[iii] Hobbes, *De Cive* [On the Citizen] (1642), Author's Preface to the Reader.

In other words, they all said, the traditional philosophers, that *ultimately* reason, i.e., the reason of an individual, private reason, is superior to the public reason, the reason of the government. Naturally, in other words, Hobbes is the one who made the demand of unqualified obedience to the sovereign *the* center of political philosophy. All these thinkers, he maintains, at least the philosophers, did not do so.

Now this does not go to the root of the matter. It indicates only a consequence of the radical change. What is the new principle itself? And that sounds very differently from non-anarchism, and I read it to you from the epistle dedicatory to his *Elements of Law*, his earliest work.

"From the two principal parts of our nature, Reason and Passion, have proceeded two kinds of learning, mathematical and dogmatical. The former [mathematical—LS] is free from controversies and dispute, because it consisteth in comparing figures and motion only; in which things truth and the interest of men oppose not each other. But in the later [the dogmatical science—LS] there is nothing not disputable, because it compareth men, and meddleth with their right and profit; in which, as oft as reason is against a man, so oft will a man be against reason. And from hence it cometh, that they that have written of justice and policy in general, do all invade each other, and themselves, with contradiction. To reduce this doctrine [of justice and policy—LS] to the rules and infallibility of reason, there is no way, but first to put such principles down for a foundation, as passion not mistrusting, may not seek to displace; and afterward to build thereon the truth of cases in the law of nature (which hitherto have been built in the air) by degrees, till the whole be inexpugnable."[iv]

So this is the program of Hobbes stated at the beginning of his career and which continued till the end. Now what is the key point? Hitherto there is not yet a natural law teaching; [it was] built in the air. Hobbes will be the *founder* of natural law. And why was it built in the air? Because it did not put down such principles as passion may not seek to displace. The true doctrine will be in a fundamental agreement with passion. The traditional doctrine was opposing passion, and therefore could not possibly have any effect. Hobbes will then still teach natural law, but on a different basis. It will be a new kind of natural law.

Now when we turn from this programmatic remark of Hobbes to a general story of what happened in the seventeenth and eighteenth centuries, we observe that a great change did take place, I mean on the most simple level, meaning on the level of what was done in the universities. Academic teaching, they are always a bit later than the vanguard thinkers. They take their time; they have to. I mean, that is not a defect, but that belongs—institutions must be slow-moving. Now if we look at that change, we observe the following items. I will just enumerate. We find in this age, in the first place, an independent treatment of natural law. Natural law is now no longer treated in a theological context as it was in Thomas Aquinas, nor in the context of civil law as it was in the legal tradition. It is treated in separate books, separate courses, separate chairs. In the seventeenth and eighteenth centuries they established in some Protestant countries, Germany and Scotland, and also in Scandinavia, if I remember well, chairs for natural law. Now in the literary form you find in this age for the first time *codes* of natural law; a whole world which contains *nothing* but natural law. And Pufendorf is a very well-known academic man and

[iv] Hobbes, *Elements of Law*, edited with a preface and critical notes by Ferdinand Tönnies (London: Simpkin, Marshall, and Co., 1889), xv.

Christian voice of whom you may have heard, through Thomas Jefferson perhaps. And some others—Vattel.[v] This is the first point.

Now let us try to understand this. If you take the Thomistic doctrine as we have sketched it briefly, there are principles of natural law and conclusions from it. That would suggest a strictly demonstrative, deductive treatment of natural law. Thomas Aquinas does not do it. Why? Because he says the more you go down to the specifics, the more uncertain do the conclusions become. The simple example: the provision against stealing is universally valid. But the command to return is not universally valid—the famous case of the madman to whom you should not return the gun. [2]In other words, while there are conclusions, the more specific you become, the more open to exceptions [you need to be]; and therefore it is impractical to present natural law in the form of codes. What takes place in the seventeenth-eighteenth century can be stated very simply by a classic book title: *Ethics Demonstrated in a Geometric Manner*, the title of Spinoza's book.[vi] You have to take ethics in the wide sense, which is of course also natural law. This was attempted by many people, even some quite old-fashioned people, but this is a very important part of the story. Now what does this imply? All conclusions are as universally valid as the principles. There is no *hylē*, no matter, which creates diversity here. The abstraction from matter; therefore it can be treated in a mathematical manner. So this is the first obvious difference.

The second obvious—I simply enumerate now, I do not interpret—the second obvious difference is that in the seventeenth century there comes into being a discipline which did not exist before and [was] obviously related to natural law, called natural *public* law. You know, public law in contradistinction to private law. Now there is a public law, a doctrine of the duties and rights of the governors and governed, which is natural, i.e., not dependent on the positive law of this or that country. Now I give you some examples. Hobbes's doctrine of sovereignty is not a *political* doctrine proper, i.e., a doctrine which describes what is expedient generally speaking for the best order. It is a doctrine of *the* right of sovereigns, and this doctrine is not based on any positive law. Hardly any ruler was a sovereign in Hobbes's sense. Even the French kings were not sovereigns because they were bound by the Law Salic and the law regarding public domain and what have you. So the natural public law has nothing to do with positive law. It overrides it, but it is clearly a *legal* doctrine. Looking back to classical antiquity, you will see immediately that the classical doctrines, of Plato and Aristotle especially, but even of the Stoics, are not strictly speaking legal doctrines. They are political doctrines. But in the seventeenth [century], in this new development, the political doctrines are legal doctrines. What is the title of Rousseau's *Social Contract*: treatise on public law. What is the subtitle, Mr. Butterworth?

Mr. Butterworth: *Principles of Political Right*.

LS: *Principles of Political Right*, but in English, in proper English translation, "principles of public or political law," and of course not the political law positive but the political law natural. And they present that public law which is universal right and not positive. Not the best regime is the chief theme, although it still survives, but that regime which is just everywhere. Which is just

[v] Emerich de Vattel, *The Law of Nations, Or, Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns* (1760).
[vi] Written 1664-65, published posthumously in 1677.

everywhere. Therefore a certain kind of inflexibility, of doctrinairism which was absent, alien to classical political philosophy. For example, if you have such a doctrine like Rousseau's, every legitimate government is republican. That is a consequence of this new public law, new natural public law. Every nonrepublican government is *illegitimate*. What a nonrepublican governor dictates in his capacity as legislator is not a law. Therefore Rousseau can say most nations do not have laws: they have things which are called laws, but he denies that they are laws because they have no legitimate source. A legitimate source can be only in a republican way. Slightly later than Rousseau, in a way implied in Rousseau, the doctrine of Tom Paine: only a democracy is legitimate regardless of circumstances. Whereas in the classic notion the equivalent would be: democracy is the best regime. But being the best regime, it is not possible under all conditions; and under unfavorable conditions, not possible. Therefore, under these other conditions, nondemocratic regimes are legitimate. But in this sweeping view the question is no longer what is best but what is legitimate.

The third characteristic of this new kind of doctrine is the central significance of the state of nature, which did not play any part in the traditional doctrine. I will take this up later. The fourth point is the shift from duties to right. In the seventeenth and more clearly in the eighteenth century, a shift takes place from the natural law to the rights of man. Or the rights of humanity, as it was sometimes called.

And the fifth and last point, which was made by Mr. Weissbrod, but this is also generally known, is that the traditional doctrine is in a loose sense a conservative doctrine, whereas the modern doctrine is in a loose sense a revolutionary doctrine. To take the example of Hobbes, on the basis of the Hobbean natural law, including natural public law—say, the king of England can completely disregard all traditional limitations of his sovereignty—say, Parliament—because this is merely a positive law flagrantly contradicting natural public law, and therefore it has no legs to stand upon. So if Charles I and his surroundings, William, Earl of Newcastle, to whom *The Elements of Law* are dedicated [wished to override the Parliament, they could]. But his was not an extremist . . . it was absolutely legal, not according to the king's positive law, but according to natural law. Get rid of all these absurd encumbrances. Good.

Now this is a purely descriptive statement about the changes that occurred there. To understand the meaning of that change, it is wise to start from Hobbes because he emphatically claims to have brought about that change. This must be judiciously understood. There are elements here which antedate Hobbes. For example, the notion of a deductive treatment of natural law is older; that emerged among some German Protestants of the sixteenth century, as far as I remember. But this was still the old traditional natural law, only given a demonstrative, deductive form. The substance was not affected. And there are other things which were prepared, but in Hobbes it is crystallized[3]—it became a complete break.

Now the situation in the academic teaching in this century was this. Of course, [a] survival of the Thomistic teaching in particular in the Catholic countries, but also to a considerable extent in the Protestant countries, because the break with the scholastic tradition, emphatically made by Luther in particular, had to be revised somewhat in the next generation by his younger cooperator Melanchthon,[vii] who saw the necessity of bringing back some academic order in the

[vii] Philipp Melanchton (1497-1560).

teaching of philosophy, and therefore with the minimum changes scholastic teachings were restored. Now they were changed very soon in the non-Protestant countries under the influence of modern philosophy, under the influence, say, of Descartes in the first place and of Leibniz in the second place. But in these modifications a very general Thomistic schema still survived, and that ended only with Kant, late in the eighteenth century. [4]But on the other hand, we must also not forget that there were also people who were not ordinarily teaching at the universities, and they are of course most remembered today, people like Hobbes, like Locke, like Rousseau. And there one can see the change very radically. I only repeat what I said at the beginning. If you look at the *academic* teaching of the seventeenth-eighteenth century, there the radical change is much less visible than if you look at the great writers. And therefore from the point of view, say, of cultural history, the change became visible perhaps only with the beginnings of the American and the French revolutions. But amongst the great thinkers, signs of the change showed themselves much more early.

Now Hobbes breaks with the tradition. What is the tradition? He gives the names of Socrates, Plato, Aristotle, Stoics. This is *the* tradition. He does not say a word about the sophists or the Epicureans or other people. That is very strange. That does not mean that Hobbes *turns* from Socrates, Plato, Aristotle, the Stoics to Epicurus. It means he did not take Epicurus and the sophists seriously: that is not political philosophy. And I think he was quite right. So the only traditional political philosophy which Hobbes recognized is what we can loosely call in our terrible slang "the idealistic tradition." A realistic tradition of political philosophy did not exist, quite rightly, because these sophists' and Epicureans' teaching was fundamentally an *unpolitical* teaching. It was a teaching of how to *use* or *avoid* civil society; it was not a public-spirited teaching. The public-spirited tradition is identical with the idealistic tradition indicated by the names Socrates and so on. Hobbes says somewhere in the *Leviathan*: I want to find out, to study what is law as Plato, Aristotle, Cicero and others have done.[viii] In his overall theme, he follows Plato, Aristotle, Cicero, not sophists or Epicureans. Hobbes breaks with a public-spirited tradition on public-spirited grounds.

This is the first thing we have to say. Now once we have said it, we are immediately reminded of a man whom Hobbes, if I remember well, never mentions—if he should mention him in an out-of-the-way place, that would barely affect the issue—and that is Machiavelli. And if we want to understand what is happening in the seventeenth century, we must understand Machiavelli. Machiavelli, a man who so to say does not say a word about natural law or natural right ever, is in a way the source of the modern natural law teaching. Machiavelli began the fundamental change. This one can *easily* overlook because Machiavelli raises the claim to having brought about a change in a very *subdued* manner, not in that manner which cannot *possibly* be overheard of Hobbes. Now what does he say? I read to you two passages. One from the fifteenth chapter of his *Prince*:

"It being my intention to write something useful to him who understands it, it has seemed to be more convenient to go straight toward the factual truth of the thing than to the imagination of the thing. Many have imagined republics and principalities which have never been seen nor known to exist in truth. And since there is such a distance between how people live and how they ought

[viii] In the first paragraph of chapter 26, "Of Civil Laws."

to live, that he who considers only how people ought to live and not how they live will bring about his ruin."[ix]

[5]This is perhaps the strongest statement of Machiavelli's break. Many have *imagined* republics and principalities and not looked at the *true* republics and principalities. He does not say "all"; he says only "many." At the beginning of his greatest work, *The Discourses on the First Ten Books of Livy*, right at the beginning, he expresses his claim to novelty somewhat more emphatically: "Although the envious nature of man has made it no less perilous to find new modes and orders than to seek unknown seas and lands."[x] He nevertheless sets out to find such new modes and orders. And later, shortly thereafter, he speaks of the fact that he is treading a way never trodden by anyone before.

Now if one puts these things together and interprets them properly, Machiavelli has set out to find new modes and orders. And that is very broad, embracing all kinds of institutions. He discovered as it were a new continent. He is a Columbus of the modern political world. So Machiavelli raises his claim, but as I say not with that simple emphasis of Hobbes. Now what then is Machiavelli's point? Briefly, traditional political philosophy is utopian. It is based on the premise that there are natural inclinations toward *ends* and therefore there is necessarily a *highest* end. More particularly, political society exists for the sake of virtuous activity. In order to pursue that end properly, the political society must possess the best regime. The best regime according to the classical [6]teaching is possible but, so to speak, never actual. It is an *imagined* republic, or an imagined principality in Machiavelli's language.

Now one can state Machiavelli's argument as follows: If the best regime is never actual, how can it be according to nature as Aristotle and Plato claimed? Must there not be a natural obstacle to it which prevents it from being actual? Differently stated, moral virtue comes into being—as Aristotle taught, and Plato too, in a way—through habituation. Habituation. And this habituation in its turn requires customs and laws of political society. So virtue presupposes political society, at least virtue in any significant sense. The political society is preceded therefore by premoral men, for if moral virtue cannot be acquired except within society, the men who founded civil society cannot yet have been moral. The moral law, if we could impute the use of the term to Machiavelli, cannot find listeners and hence addressees before men have become civilized. Morality is possible only after the condition of morality has been created by men through the foundation of civil society; and this condition cannot be created morally because morality is possible only once the conditions exist. Morality rests on immorality, to state it as sharply as possible, just as legitimacy rests on revolution. Machiavelli henceforth is compelled to raise the question—in order to find some bearings and not simply to leave it at a debunking, in order to find his bearings politically he must give another doctrine, and therefore he raises this question: Not what is the end toward which political society *ought* to direct itself—because, he says, no political society in fact does it—but what is the society which the actual states pursue? Then he says that: What do they do? They are concerned with their self-preservation; they are concerned with freedom from foreign domination; they are concerned with *glory* if they can afford it; and similar things. These things—self-preservation, freedom, glory—that is the common good, and not virtue. Virtue is indeed required as a *means* for that common good. You must have, so to

[ix] Presumably Strauss's translation.
[x] Presumably Strauss's translation.

speak, Roman virtue if you want to get these things. But this means not moral virtue, [rather], *political* virtue. You can also say republican virtue is something radically different although partly overlapping with moral virtue, because if the common good in this sense is *the* end, *the* highest good for political action, it follows that every means conducive to this end is good, and everything which is not conducive is bad. In a mythical expression alluded to by Machiavelli himself, Romulus kills Remus. Fratricide—in a way the gravest of all crimes—is the origin of the most glorious of all political societies. Every political society has such an origin, open or concealed. And this is not due to a sin or a weakness but is necessarily so because morality cannot be practiced before the conditions of morality have been created by the founding action, and the founding action cannot be moral.

This is of course the most well-known part of Machiavelli's doctrine, and I add as a corollary, which is also very well-known, that what is true of the origin or beginning is of course also true of every critical situation. War, civil war, or any other crisis where it again becomes necessary quasi- to refound the political society by all means fair or foul, because these fair or foul means are the conditions for any effective distinction between fair means and foul in ordinary life. For ordinary purposes the distinction is absolutely valid; Machiavelli did not recommend petty crime and similar things. But the men with the responsibility for the whole cannot be bound by that morality which is very easy for every normally intelligent man to practice.

But Machiavelli takes a further step which is much less visible but nevertheless *is* visible. Hitherto we have presupposed that the political society, the state, *polis*, or whatever you call it, is *the* irreducible fact; *the* common good in the sense defined is the ultimate beyond which we cannot go in any serious political observation. But now we are compelled by Machiavelli's argument to look, to *look* at the unity of the *polis*. Is it not reducible to something more fundamental? Now we observe first a cleavage in all societies, the cleavage as Machiavelli calls it between the rich and the poor. The city is in order if there is harmony between the rich and the poor, but this harmony is by no means necessary. So we get then the question: What is the true common good in case of doubt? The common good of the city, or the common good of which of these two parts? And Machiavelli, as a reasonably fair man, says: the common good of the *poor*. Because they are ordinary—he does not think very highly of the poor, but of the *cause* of the poor—the poor want to be left alone in the possession of their small properties, of their wives and children. But the rich are grasping, so the cause of the rich is less just than the cause of the poor. So all right. This leads in itself to very great consequences. There are some tones of the French Revolution that can already be heard.

But we must follow now the more logical argument, because Machiavelli does not leave it at these sections, the rich and the poor, whatever it may be, but he goes back to the elements of these very sections. And these elements are of course the individuals. Ultimately the rock-bottom phenomenon for Machiavelli is the individual, and not the city. Now what do we find here? Now what prompts the individual? Self-interest. This is *the* rock-bottom fact. The politically most important forms of this self-interest are of course property and glory. And glory. In other words, the mere self-interest in mere life, that is politically not so important. It is very important for penal law, but it is not important politically. Property interest and the interest in political office and other honors, that is the political question. Now but both property and glory presuppose political society, which recognizes, protects, assigns property, glory. So the practical conclusion

would then be—and that reminds me of course of the sophists—[7]that life, the sound life, is the exploitation of political society for his private purposes by the individual.

But Machiavelli does not stop at the sophists' thought, because he sees another possibility on the strictly egoistic basis which is not considered properly by the sophists and still less by the Epicureans, and that is this. One can make arrangements so that the exploitation of political society for one's selfish purposes becomes identical for all practical purposes with dedication to the common good. This mediation between egoism and altruism is effected especially through glory, concern with glory. The men most concerned with an utmost far-reaching glory act in a way completely oblivious of their self-interest. Take the case of a founder of a society. The founder of a society invests as it were all his happiness in the grandeur of that society he founds. His self-interest in *his* glory becomes identical with the interest, the common good, of the particular society he founds. This is a very rough sketch of the change which Machiavelli effected; and you see also both the difference between Machiavelli and the so-called idealistic tradition on the one hand, and the sophists and the Epicureans on the other. For the Epicureans glory was just sham. *Pleasure*. Glory was mere illusion.

Let us now turn to Hobbes, to Hobbes's revolutionary political philosophy. This revolution is indeed inseparable from a revolution in philosophy in general, a great revolution which means the genesis or emergence of modern philosophy. In what does this revolution consist, [or], which is the same thing, what precisely is modernity—because we will find the core of modernity, of course, most clearly in modern philosophy. A very frequent answer is: Secularization of biblical beliefs. This is a defensible assertion, but it is not good enough because we must make clear what it implies. A secularization of biblical beliefs means of course a break with biblical beliefs or, to state it still more clearly, an *unbelief* regarding all or many of the biblical beliefs. Now such unbelief one could rightly say is also true—characteristic of classical philosophy, of Greek philosophy. Therefore, the true question is: What is the difference between classical and modern philosophy? This question was discussed, became known to the general public under the name, "the quarrel of the ancients and moderns," *le querelle des anciens et des modernes*, late seventeenth century. If you want [a reference] from English literature, [it is] in Swift especially, *Battle of the Books*[xi] and other things in Swift. But in the vulgar version it is merely a question regarding the rank of fine arts, especially poetry. For example, are the tragedies of Racine inferior or superior to Euripides's tragedies? This kind of thing. But the real quarrel, the real quarrel concerned modern and ancient philosophy. And when you look for example at Hume's *Treatise of Human Nature*, you find still such chapters about modern and ancient philosophy from the point of view that this is the key question. What I said is of course not to deny that the difference between classical and modern philosophy may be traced to the influence of Christianity on modern philosophy; that is possible. But primarily we have to state what the difference between classical and modern philosophy is.

Now the clearest expression of this seventeenth century revolution is Descartes's universal doubt. To understand it, one must look at the situation as it prevailed in Descartes's time, which time extends for centuries. In other words, one must have a rather broad view of Descartes's time. But the most striking fact was, when coming from the outside, the variety of schools, *n* schools. Now [this is] a disgraceful condition. Philosophy is the quest for the universal science.

[xi] Jonathan Swift, *The Battle of the Books* (1704).

If there is such a variety, the universal science does not exist. If we want it, we have to make a radical change. We must proceed in a radically different manner than *all* philosophers have proceeded hitherto, because hitherto there has not been produced anything but this intellectual anarchy. Let me state it somewhat more precisely: a variety of schools which make definite assertions regarding the whole. The traditional name for this kind of philosophy was dogmatic philosophy. Dogmatic philosophy. It did not have a bad, pejorative meaning at all. Now, but there was not only dogmatic philosophy, there was also a thing called skeptical philosophy, [a] school which did not answer the question regarding the whole but left it at suspense. The only glimmer of light for him who was concerned with knowledge was supplied by mathematics. Physics—to mention this in passing; you will see why this is important—was not a glimmer of light. Physics was a part of philosophy and therefore in the same deplorable condition as any other part of philosophy. There was Aristotelian physics, the most well-known; there was Stoic physics; there was Platonic physics; there was Epicurean physics. In other words, the fate of physics was in no way better than the fate of metaphysics.

Now the distinction between dogmatism and skepticism is not exhaustive. If you do no realize that, you will not understand the problem. An external sign is the fate of Plato's school, the Academy, which was for some time dogmatic and [at] other times skeptic. This points to something in Plato which does not permit to [8]being subsumed under [either] dogmatic or skeptic[9]. In the seventeenth century this great turmoil, great men, not technically philosophers—and perhaps for this reason somewhat wiser than the other seventeenth century philosophers were—Pascal made this remark about this issue: "We know too little to be dogmatic and we know too much to be skeptic."[xii] A very wise word. The latter can easily be proven. For example, if you remember any skeptical argument, say, regarding sense perception, [that] sense perception is deceptive, they go through all the five senses: sight, hearing, and so on. And then you can be sure that when they try to prove [to] you the inadequacy of seeing, they speak of the eyes. When speaking of the inadequacy of hearing, they speak of the ears. So they *know* that, ya? So in other words, we know something. We cannot be simply skeptic. And on the other hand, it makes sense to say we know too little to be dogmatic.

Now this view stated by Pascal, who had so to speak nothing to do with Plato, nevertheless renders well the Platonic view. There is no . . . we do not possess wisdom, but only *quest* for wisdom, or in Greek, philosophy. Yet on the other hand, according to Plato there are no *assignable* limits to philosophy. Contrast this with the modern parallel. The greatest case is probably that of Kant. Kant, as some of you surely know, made a distinction between the phenomenal and the noumenal, the non-phenomenal. And in a sketch, if this is the noumenon and this is the phenomenon. [LS writes on the blackboard] Here, [*noumenon*], we know nothing; at least we have no theoretical knowledge, nothing, complete darkness. Here, [phenomenon]—exaggerate a bit: complete light. The sphere of human knowledge, in which there is a maximum . . . let's say, for simplicity's sake: a sphere of complete darkness, a sphere of complete light. The Platonic view is rather—if one can make this distinction, this is not completely dark, and this is not completely light. No such line can be drawn. The Platonic explanation of this state of things can perhaps be stated as follows. Man is that part of the whole

[xii] Pascal, *Pensées* (ed. Brunschvicg), fr. 434. See *Leo Strauss on Plato's* Symposium, ed. Seth Benardete (Chicago: University of Chicago Press, 2001), 4-5; Leo Strauss, *On Tyranny*, Revised and Enlarged (Ithaca, New York: Cornell University Press, 1963), 209-210.

which is open to the whole. There is a fundamental harmony between the human mind and the whole. Man is the microcosm. A corollary to that we find in his political philosophy: the best regime is possible, but not probable. The realization of the best regime depends on the coincidence of philosophy and political power, on a coincidence, on chance, something which can never be controlled.

Now let us now see what Descartes has tried to do. Descartes starts from the universal doubt, from the doubt of everything. The highest part of the doubt has this character. There may be an omnipotent god who might wish to deceive me in every respect. The universal doubt counts with this gravest of all possibilities, much graver than the difficulties implied in sense, in perception by the senses and other things. Descartes seeks a certainty even against this possibility of an omnipotent god who might wish to deceive me. Descartes seeks an absolute certainty, and the result of this is that the absolute certainty is: I think, I am. Because even if an omnipotent deceiving god wished to deceive me, I would have to be. I would have to be a thinking being in order to be deceived. I, thinking being, is *the* absolute certainty from which we start. [10]Nothing remains at this stage, nothing is accepted, except this: I think, I am. That means [that] this thinking *I* is in itself extramundane, outside of the world. There is no world at this stage.

I followed this thought through without considering the rest of Descartes's doctrine because the rest of Descartes's doctrine is not important for the understanding of Hobbes. Now on the basis of sense data which that ego has—red patches, shrill sounds, maybe—on the basis of sense data, this extramundane ego constructs the whole within which man is an accident. In other words, he develops this overall view of the universe which became the view of modern science. Modern mathematical physics was fundamentally based on such a notion. And here you see what is crucial for our present situation. The lasting effect of the revolution of the seventeenth century was the emergence of a physics which is no longer metaphysical, as the old physics were. It is a physics which is as metaphysically neutral as mathematics. Therefore there is no longer in modern times *n* schools of physicists; there is this one single enterprise of physics in which there may be varieties of moods and methods but in which there is no longer a radical cleavage as it was in premodern times.

Modern [science]—and of course what we call now science is something which came out of this great success of physics because it extended to chemistry, biology, and so on—[11]our notion of science, which is now prevalent, is exactly this: that science is an enterprise which is no way dependent on philosophy or metaphysics. Science is the genuine knowledge; philosophy is something rather shadowy, at the margin of science, and which is necessary strictly speaking only as understanding the *procedure* of science, i.e., methodology, epistemology, however you might call it. That has its roots from [the seventeenth century], [but] of course, this notion was in no way developed in the seventeenth century; that came out only after the thing proved to be successful. The real proof of the success was Newton. I mean, this is late in the seventeenth century, but from that moment on this issue was settled. And then in the eighteenth century, then there came this notion that metaphysics is a wholly dubious affair and we have to have mathematics and physics as the true sciences. And this is true up to the present day. [Man is an accident. Under certain conditions man emerged. These conditions were not necessary to arise. And yet this purely][xiii] eccentric being—I mean, eccentric to the whole, a pure accident—is at the

[xiii] The words in brackets here have been added from the original transcript.

same time *the* origin of all meaning and truth. There is no meaning anywhere except by human acts which establish meaning. So man is on the one hand much less than he was in the past. He is not the microcosm or created in the image of God: he is an accident. But on the other hand, [he is] much more. He is in a way the originator of everything, if everything must have meaning. Man is an accidental product of moved matter or something of this kind who happens to be able to become the master of the whole. This whole of which man is an altogether insignificant part is relative to man because everything we know of this whole we know by virtue of *human* constructs, human constructs having the character of concepts.

Now this is the background, I believe, against which one must see the emergence of modern natural right, although these things were not yet developed to this extent. I might say a word about Hobbes's relation to Descartes. They were contemporaries. Hobbes was born earlier, about six years earlier, and lived much longer than Descartes. Hobbes was a man who lived unusually long. He took very great care of himself, and Descartes died very young. Now the relation, very simply: there is a great agreement. Descartes was a precocious man, and Hobbes was the opposite of precocious. So Descartes stunned Europe, as they called it in the eighteenth century, "*étonner L'Europe*," when he was about forty. And Hobbes's success came much later. Hobbes was unquestionably jealous of Descartes, one has to admit that. He was jealous, and some little pettinesses I heard, but Hobbes was on the whole a decent man. But he tried to pluck some of the feathers of Descartes on this ground—that is, I think, quite obvious. The agreement: the whole universal doubt. The key position. Hobbes says: Elementary, elementary. [Laughter] So, I mean, what an agreement! In opposition to Descartes, who developed on this new basis—[who] restated in a way the traditional theistic teaching and the metaphysics of the soul, Hobbes was an open materialist: to be means to be body, and what is not body is nothing, explicitly said. Now what we have to think about that materialism is a long question, but there is no question, I think, that Hobbes meant it literally. Whether he was able to maintain it literally on the basis of his epistemological principles is a question into which I do not have to go.

Now I turn to Hobbes's political philosophy in particular. The starting point of Hobbes's political philosophy is very simple, very traditional: the traditional definition of justice. Justice is the constant, perpetual will to assign to everyone what is his. Hobbes accepts it. He does not see—in contradistinction to Plato's argument in the *Republic*, he does not see a difficulty here. I mean the difficulty that what belongs to a man may not be good for a man, this difficulty which led [Plato] later, in his radicalism, to elaborate the notion of the absolute rule of the wise, the wise who alone would be able to assign to each what is good for him. That is disregarded completely by Hobbes. He argues rather as follows: To give everyone what is his is property. But what about property? Property, Hobbes says—and again, that was traditional view—property is *instituted*, i.e., that I own this piece of land, which is of course an entirely fictitious example, that I own this piece of land is not by nature. There is no natural aptitude of this particular field for me and only for me. That I own it, that the things have been distributed in such a manner that I happen to own it, is merely by institution. That was the traditional view.

But institution is of course secondary compared with nature. Therefore Hobbes has to raise the question of what is man's *natural* state, where there could not yet have been property. What is the state of nature? Now we must see what this precisely means. The state of nature, this much is clear, is the initial state, that from which all civil society started. It is, in contradistinction to what

the term "state of nature" would mean in classical philosophy, the opposite to the completed or perfected state. For Aristotle especially the natural state of a being is its completed or perfected state. That is simple common sense. A farmer calls his hand, "Bring me a horse." The hand brings him a colt, and he says, "I told you to bring a horse!" "But is not a colt a horse?" "No, not quite. A colt is a horse with a qualification. A *young* horse." Or if he had brought him a crippled mare, he would have said, "Did I tell you to bring me a crippled mare?" Then we speak of any other everyday example, say, "I walked through this square and there were lots of people." It was crowded with people. But if all these had been women or children, you would not say "lots of people." You would have said "women or children," because—I mean, ladies must excuse, I am trying to restate an old view which I do not share [laughter]—woman is human being qualified; child, human being qualified. Human being unqualified: we mean men. So this was truly the traditional notion, so the natural is the complete or perfected. You will never call a house, speak of a house which is in the process of being constructed. It is not a house. It is something which will be a house, not a house. A house is a completed house. The same applies to everything else. We keep this in mind. The state of nature, meaning the initial state in opposition to the complete or perfected state, implies in the case of Hobbes, surely, *there are no natural ends*. There is no end state for Hobbes, and this of course is in perfect agreement with the spirit of modern science.

But we must look at this a bit more closely, the state of nature prior to Hobbes. Now it stems in the first place from Christian theology, where the term was very common; and Hobbes knew it of course. I think the issue can be stated very simply. This reminds me, Father Ward. I made a mistake regarding Christian theology last time and you did not bring it up as you promised in the beginning of the class. We will do it next. Good. Now the simple schema, as far as I understand it, is this. There is a state of nature, which is subdivided in a state of *pure* nature and a state of corrupted nature. Prior to the Fall, after the Fall. Then I forget complications, not the main point. There is a state of grace in which the corruption is remedied and in which even the state of pure nature is transcended, more *perfect* than the state of pure nature. This is the Christian scheme. The Hobbean scheme is much simpler: State of nature, state of civil society. It is very simple. There is no distinction between a state of pure nature and of corrupted nature. Hence there is no need for grace, for redemption; and furthermore, the state of nature is very unsatisfactory. As Locke puts it, it has many inconveniences. But the inconveniences are remedied not by grace but by the establishment of government or civil society.

This I think is the most obvious meaning of the change effected by Hobbes. But we must entirely overlook a certain intraphilosophical change. Now ordinarily when you read contemporary authors or almost contemporaries, when they speak of the state of nature—say, Suárez, for example, when he speaks of the state of nature he means the state in which *pagans* live, pagans live, meaning of course barbarians, because ancient pagans no longer exist. The pagans; and this is of course a state of civil society. And this subdivision is: there is also a state of law, which is the state of the Jews after the Mosaic legislation. That's what Maimonides says. But the state of nature has nothing to do with a presocial or prepolitical stage. But there are certain minor changes which have taken place. There is a passage somewhere in Suárez where we can find that, a very vapid thing which occurs as it were in a footnote or in a corner and therefore it does not have the *fundamental* significance which it took on in Hobbes. Now according to this view, part of which can be traced to earlier literature, there is a natural law which does *not* presuppose the institution of human societies. There is a natural law which presupposes the institution of

civil societies. Before that institution—I quote now in Latin: *non supponitur aliquid praeter statum naturale hominem*—before that institution, nothing is presupposed except the natural state of men or the pure natural condition by virtue of which man is a social animal. In other words, the pure nature; there are no institutions . . . There is only man's nature, but man's nature as a social animal. And here one sees even from this point of view the more subtle difference. The state preceding any convention, any agreement is according to Hobbes a state in which man was not yet a social animal. Man is by *nature* asocial. In other words, this closes the approximation of Hobbes to a pre-Hobbean text; [it] brings out the radical difference between Hobbes and this earlier doctrine very clearly. Man is by nature asocial. Nature dissociates men—nature. Man, by art, brings men together. Nature dissociates men.

Now Hobbes has on the other hand of course said man is by nature rational, and one can state the relation of Hobbes to Aristotle very simply as follows: man is by nature rational, indeed, but not social. But still Hobbes does not understand quite the same by "rational" as what earlier thinkers understood by it. According to Hobbes, our reason has something analogous in the mind of the beasts. But what is the precise difference between the human and the bestial mind? The beasts too seek the causes producing an imagined effect, whereas man alone can see the possible effects of a thing imagined. Is this intelligible? I believe I would have to reread it, and even that might not be sufficient, so I will explain it. But what does it mean to seek the causes producing an imagined effect? You want something, say, [12]a roof over your head, and then you think how to get it. You need some materials, straw, or wood, or whatever it may be. Here you seek causes producing an imagined effect, the imagined effect being the roof over your head. This beasts do too, but what men alone can do is to think the possible effects of the imagined. You see the thing imagined, say, lightning, and then you see [13]what effects could this lightning have for you, how you can use it. Rather simply stated, and perhaps too simply stated: teleological thinking is not peculiar to men. The beasts too think teleologically; they seek means for ends. But to think mathematically, to start from premises, and make inferences, conclusions, from the premises, this is a specifically human reason. I think that is very interesting and perfectly of course in agreement with Hobbes's general notions.

But to come back to man's natural asociality. Man is by nature asocial. That means only *calculation* leads man to society: a deed, a contract. This contract is not supported by a natural inclination toward society, by a natural end. Now let me explain this. For example, let us take a very common notion of marriage. In marriage there is also marriage contract, but the marriage contract is—[it] obviously presupposes and is supported by a natural inclination not necessarily between these two individuals if they are not sentimental. But human beings of a different sex who can procreate can thus contribute to the permanence of the human race. This natural inclination about procreation is the basis of the contract. In Hobbes's case there is no natural inclination underlying the contract, merely passions and connected with calculations, as I will describe later.

Now in order to understand this we must first raise the question: How is man in the state of nature or in the state in which he is in the grips of all his natural passions, how can he come to discover there the difference between right and wrong? Now let us look at the passions, or, which is provisionally the same thing, let us look at the passions as Hobbes saw them.

"The comparison of the life of man to a race, though it holdeth not in every point, yet it holdeth so well for this our purpose, that we may thereby both see and remember almost all the passions before mentioned. But this race [man the race—LS] we must suppose to have no other goal, nor other garland, but being foremost; and in it:
To endeavour, is appetite.
To be remiss, is sensuality.
To consider them behind, is glory.
To consider them before, humility.
To lose ground with looking back, vain glory.
To be holden, hatred.
To turn back, repentance.
To be in breath, hope.
To be weary, despair.
To endeavour to overtake the next, emulation.
To supplant or overthrow, envy.
To resolve to break through a stop foreseen, courage.
To break through a sudden stop, anger.
To break through with ease, magnanimity.
To lose ground by little hindrances, pusillanimity.
To fall on the sudden, is disposition to weep.
To see another fall, disposition to laugh. [Nasty man—LS]
To see one out-gone whom we would not, is pity.
To see one out-go we would not, is indignation.
To hold fast by another, is to love.
To carry him on that so holdeth, is charity.
To hurt one's-self for haste, is shame.
Continually to be out-gone, is misery.
Continually to out-go the next before, is felicity.
And to forsake the course, is to die."[xiv]

That is one of the most poetic passages in Hobbes. But to come back to our question, he says here: We may by this comparison remember *almost* all the passions before mentioned. Which passions are not mentioned? One especially, of which Hobbes thought very highly.

Student: Pride?

LS: No, no, pride is here. Perhaps not the word, but glory is here.

Student: Fear.

LS: Fear, than which no passion was more important for Hobbes. That is exactly the point. Yes. Now fear has a very special character. Fear can somehow not be understood within the context of this race for superiority. Fear is a passion *opposed* somehow to this race. Now we are still trying to understand, How can Hobbes find a basis of right if the only thing to be considered are the passions? Now what do we understand by what is right generally? What a man may do

[xiv] *Elements of Law*, part 1, 9.21, Tönnies, ed., 47-48.

blamelessly. And a man may do blamelessly what he cannot help doing. What is absolutely inevitable for him to do—we cannot blame him. Now according to Hobbes there is one thing and only one thing which man *cannot* under any circumstances forgo doing or forbear. I'll read it to you from the version in the *Elements of Law*, which is not the best presentation but I could not bring all the books with me. Here is this.

"And forasmuch as necessity of nature maketh men to will and desire *bonum sibi*, that which is good for themselves, and to avoid that which is hurtful; but most of all that terrible enemy of nature, death, from whom we expect both the loss of all power, and also the greatest of bodily pains in the losing; it is not against reason that a man doth all he can to preserve his own body and limbs, both from death and pain. And that which is not against reason, men call right, or *jus*, or blameless liberty of using our own natural power and ability. It is therefore a *right of nature*: that every man may preserve his own life and limbs, with all the power he hath."[xv]

In the parallel, in his book *On the Citizen*, he expresses this somewhat more strongly. You are amused, but it [is true]. It *is* funny, I admit it. Now in the *De Cive* he puts it, "man's avoiding death is so necessary as a stone falling downward."[xvi] There is no *possibility* of a choice. Self-preservation is *the* basic right, the basis of all other rights and duties. This is *the* foundation of the whole moral-political teaching of Hobbes. Now in order to understand that, we have to compare it with the traditional teaching, and let us take the simple schema which we found in Thomas Aquinas about[14] the variety of natural inclinations. The self-preservation was there, but there was also [15][sociality], and there was also inclination toward knowledge, and in particular knowledge of God. What Hobbes does is in this respect very simple: he abolishes the two higher inclinations and leaves only the lowest. And we can easily see why he does that, that we understand from Machiavelli: Let us be realistic. You cannot trust the majority of men that they will waste any effort in regarding these higher things, but that they take care of their self-preservation, that everyone takes cover when another points a gun at him—you know, at least normally—this is rock bottom. And here this way we can find our bearings.

Now self-preservation is not strictly speaking an end, something which beckons like the sweetness of life can be said to beckon, but rather a revulsion from death, because Hobbes knew quite well that people can live and can be reasonably sure of their life and then be very miserable. But only when they are confronted with a loss, then are they concerned. So it is a revulsion from death rather than clinging to life. The basic right has to with self-preservation, i.e., my life and limb, my body and the limbs. What is by nature each man's home, as Plato had said, is the body. But in contradistinction to Plato, Hobbes says there is nothing which is by nature common. That is out in Hobbes. In Plato, say, truth especially is that which is by nature common. That has no parallel in Hobbes's teaching.

So the root of right and all goodness is fear of death, and more specifically fear of violent death, death especially at the hands of other men, because death, our natural death, we cannot do anything about it. Apparently Hobbes did not think too highly of medicine, not as highly as Descartes and other contemporaries, so he concentrated on that kind of death where you can do something about it, namely, the death threatening you at the hands of other men. As you know,

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[xv] *Elements of Law*, part 1, 14.6, Tönnies, ed., 71. Italics in original.
[xvi] *De Cive*, 1.7.

there are policemen, there are gallows and other institutions which serve this purpose. Now the root of goodness for men is fear of death, but on the other hand the root of badness—of badness, of all injustice—is pride. All these things entering into that race of which we have spoken before. The very title of the *Leviathan* is taken of course from the Book of Job, but with most special regard to the verse where the Leviathan, this animal, this mythical animal is described as the *king* of the children of pride, and which Hobbes takes to mean that being which keeps *down* pride.[xvii] Pride, concern with superiority, with inequality and so on, that is the evil thing. Hobbes finds the badness of man not in sensuality or bestiality but in pride, and it is easy to say that there is something connecting him here with the biblical tradition.

Now before I turn to a closer discussion of this point, I would like to ask now Father Ward to make his point, and I believe you want to say something too. No? First, Father Ward, because we owe him that. And he owes it to us.

Fr. Ward: . . . Thomas . . . this is very unequal . . . Suárez . . .

LS: Good, but then will you tell us how this affects my presentation?

Fr. Ward: I don't think it affects it too much beyond saying that it is necessary to distinguish. The primacy of the will is a very important point because it can never proceed . . . the law in general . . . somehow or other . . . the will of the lawgiver.

LS: I see that. But does it not come in only in the following way, that he says both intrinsic goodness and command must come together? I mean, the content of the command is not due to the will, ya?

Fr. Ward: Thomas would seem to downplay that to the extent that he somewhat seems to be embarrassed that this is the intrinsic content of law because it becomes evident to him that the discussion of the natural law . . . to arrive at the knowledge of the will of the legislator . . . so that he has to somehow or other . . . almost . . . give the supremacy to the will.

LS: I see. Well, I thank you for this information. I do not know these metaphysical disputations.

Fr. Ward: This does revolve around a very delicate metaphysical distinction and one that . . . is not always very clear on. He does violence and a somewhat poor exegesis of many of the questions of . . . this nature . . . leaves out . . . primacy of reason.

LS: I see. I can only say that on the basis of the first book of the *Treatise on Laws* I did not have the impression—I mean, there is difference from Thomas in the formulation, but as far as I could judge I didn't see a clear deviation as distinguished from an elaboration.

Fr. Ward: . . .

LS: Thank you. I do not know that. So this point has been made clear. And now?

[xvii] Job 41:34.

Student: What were the two higher inclinations which do not exist in Hobbes?

LS: Which do not exist in Hobbes? Towards society and towards knowledge, especially knowledge of God. So, and you see how this fits into the "quote realistic intention." Trust only the rock bottom fact, something which is fully effective in all men at all times. Now literally that cannot be—nothing can do that—but as much as possible; whereas a dedication to society, dedication to knowledge or to virtue, this you cannot count on. Some people, some time, yes; but if it is a matter of sheer life and death, including of course, although Hobbes doesn't mention it, bread and butter, that is something—perhaps even bread and water only—that is something on which you can count. That is I think point. Mr. Macatee?

Student: I got lost a long time ago. Machiavelli alleges he took a way that is never taken before and discovering new modes and ways—new modes and orders. And the notion is that he founds new modes and orders, and the thing which he finds and the thing of which he is a founder, this will be a particular regard for him . . .

LS: Yes, that is his particular position. You see, Machiavelli is of course not the founder of a society, and he is a founder—he is a *teacher* of founders. He is a teacher of those who found states in the best manner, and the best kind of states. As such he is of course in higher glory than the founders. Then look, even in Soviet Russia Marx has a greater glory than Khrushchev—at least not power, but glory.

Same Student: I think you might have talked about this but I am still not clear. Why does the founder have a regard for that? Why does that common good become—?

LS: Because he is concerned with his immortal glory. And [that] the discoverer of *the* political truth on the basis of whose precepts it is possible to establish the best kind of viable society will be, so to speak, eternally blessed by all citizens of states founded according to them, and even by citizens of other states—because they are very miserable because their founders disregarded Machiavelli's rules—redounds to the glory of Machiavelli. That is simple. That is a part, by the way, of the argument of Plato's *Republic*, only in Plato's *Republic* that is only a stage. I mean very simply, there is an ascent from small-time criminal, via tyrant, to the founder. Small-time criminal, via tyrant—I see you did not expect this [16][route]. [Laughter] But you can also have lots of criminal [activity] in between; the tyrant and eventually the founder. The founder is a man concerned only with his own glory. But in this case, in the case of the founder, concern with his own glory is practically indistinguishable from dedication to the common good, because his glory stands and falls with the glory of the society founded by him. But in Plato this is a kind of sham conversion preceding the true conversion, namely, we are concerned with the truth, to be concerned with the truth, with knowledge, is the true purification of man from every concern with glory, even—simply realizing the delusion of glory. There cannot be immortal glory.

Student: Well, founding, the difficulty is, I did not understand the word. Founding as in Columbus founding—

LS: Ya, sure. Oh, sure, there is in other words, a difference between the legislator and the teacher of legislators. That is a very simple distinction. Mr. Boyan?

Mr. Boyan: I was wondering if you can briefly tell us what makes the jump of the extramundane ego, from man being an accident, to . . .

LS: This is of course—I took into consideration a later development. Now in the present-day epistemological discussions—I think you will find it for example in Nagel's book, for example, although I have not looked at it there—is this. The strict theory of science, logic, epistemology, is solipsistic, i.e., it does not assume that we know the things as things. What we have are sense data, sense data, and of course we also have percepts, as they say. In addition, we make mental constructs and these are the concepts. Out of the percepts and concepts, we each—each builds up an orderly world. The fully developed form in which this is done is modern science. Now modern science is characterized by the fact that it is metaphysically neutral. Someone else? You want to say something.

Student: Machiavelli . . . cover every situation or only some situations.

LS: No, every situation is in a way impossible because of the infinity. But by covering as it were *the* cases under which all possible situations can be subsumed, to that extent, yes. Of course it is very much concerned with what to do once civil society is established and to have relatively normal, satisfactory traditions, but the interesting thing of course is how to preserve it, because there will always be disturbances around. To that extent he never loses sight of the precarious character of any established order. But he is very much concerned with having a stable order. But, to repeat, there is never such a stable order that dangers and grave dangers are not around; and therefore according to a statement he occasionally makes, from time to time, every thirty to forty years, it is necessary to draw up the reins, to return to the beginnings. And this means, in plain English, to give people a taste of the initial terror. I mean, you know, criminal justice becomes lax and [17]all kinds of things, and then something must be done about it; and some great acts of penal justice, spectacularly done, remind people of what they have to do in order to preserve society.

Student: How did you understand the distinction, the transition between the modern doctrine of the state of nature and the view that preceded it?

LS: Very simply stated, this: for the premodern view, especially in Aristotle very clearly, the state of nature of a thing is a state in which a thing has reached its perfection, its peak. So the grown-up healthy horse, that is the state of nature. Now in the case of man, say, the man engaged in the highest human activity, which is not possible except within civil society, this is the state of nature of man. For Hobbes, the state of nature is a state *antedating* anything done, anything established by man: the beginning, not the end, in the sense of the peak. And the other difference, the other indication of the state of nature according to Hobbes, is the difference between Hobbes's doctrine and the Christian doctrine, which I have made clear in this simple scheme, ya? No grace, but civil society; and no distinction between a state of pure nature and a state of corrupted nature. Now you wanted to say something.

Student: I wonder how you contrasted Hobbes's view that language is an attribute of speech and not of things, that language is a construct, to that of the classics? Because surely Aristotle

realized that a word such as reason that we use in describing things is in a certain sense conventional, and then of course—

LS: I didn't say a word about language. I did not say a word about language. But the distinction which you make is indeed necessary. For example, let me state it very crudely as follows: a concept is one thing, a word is another thing. The concept of a lion is not the word "lion." And that can easily be proven by the fact that a Frenchman and an Englishmen have both the same concept of lion and yet the one would use an English word and the other would use a French word. Words are conventional. Concepts are not conventional. Now this is the Aristotelian view. What happens in modern times, and Hobbes plays a very great role in this respect, [is] that concepts themselves, not only words, are conceived as constructs. I mean today, for example, in the positivistic doctrine concepts are constructs. They are not the same kinds of constructs as words are, and their relation is complicated. But according to Aristotle a concept is not a construct. A concept emerges in the human mind under certain conditions *naturally*. For example, you see many lions, and [18]out of this, [out of] your awareness of the variety of lions under certain conditions, then it dawns upon you: These are all *lions*. You make that jump. It is a very simple experience which Aristotle has in mind. You are concerned with something, say, in empirical political science, whatever you take, and suddenly you say, as they say today: Oh, that's a pattern. The observation of that pattern is qualitatively different from the data you had before. And in all understanding, such an emergence, sudden emergence of a pattern takes place. This is what the difference between *mere* variety of data, of individual cases, and the concept.

Student: Hobbes denies that?

LS: Ya, for Hobbes the concepts are artifacts, are artifacts. I mean, I cannot go into this because I would have to explain a lot of things. I address this only to those who have heard of that. There is a word which is frequently used in this connection: nominalism. Hobbes was a nominalist. That is quite true. And there was nominalism in the Middle Ages, but the difference between Hobbes and the medieval nominalists is precisely that for the medieval nominalists the concepts emerge *naturally*, by a natural process, whereas according to Hobbes they are *made*. They are made. And [19]there is also nominalism in classical antiquity. [20]Epicureans called concepts anticipations, *prolepseis*. Anticipations mainly, because once this has happened you *anticipate* in all future cases what the peculiarities of the lion may be. Also he understood it as a natural process of the formation of the *prolepseis*. Therefore in all these earlier thinkers language and thought are much more radically distinguished than they are in Hobbes, and this creates a very great difficulty for Hobbes's full doctrine, because Hobbes says man is by nature asocial but he is by nature rational. But if rationality, thinking, is impossible without language, i.e., without society, how can men be rational while being originally presocial? I will address this difficulty later, a difficulty which did not exist for people who *apparently* said the same thing about thinking as Hobbes did. Mr. . . .

Student: . . .

LS: Is it relevant for our question now?

Same Student: . . . Hobbes.

LS: Unfortunately, I have to devote considerable part of next meeting to Hobbes again. Does it refer to what we have discussed about Hobbes today?

Same Student: . . . There is very likely a tie between the sudden appearance of the modern detective story and certain . . .

LS: Well, that is in the pop culture, popular culture. Now what I mean is only this. If you read, say, the classic Sherlock Holmes, and the others too, what does it turn [21][on], almost always? On violent death and how to avoid [it] or rather, since it is too late, how to avenge it. And I believe there is a connection between this theme of the detective story and the popularity of detective story as a kind of successor to tragedy that has to do I believe with the victory of the Hobbean orientation. That is all I can say at the moment. I probably meant a bit more, but I do not remember that now. And surely that has very much to do of course with the victory of the scientific spirit. Look, Sherlock Holmes is, as you know, a scientist, and he applies the scientific method to crime detection to make the world secure, secure by science, because the ordinary police force, Scotland Yard, is obviously not too successful, as we are told time and again. That is, I think, an important and interesting part of the modern enterprise but it is not theoretically on a very high level. But one has also to understand it.

Same Student: . . . ancient tragedies . . .

LS: Very simply, what is the effect of a tragedy? Purification of pity and fear according to Aristotle. Now what is the effect of a detective story or the same thing on the screen? It is [a] much more normal one. I think one point is that you are pleased that the criminal is caught. I think no one has this sensation at the end of the *Antigone*. [Laughter] Now the effect of [22]the detective story is much more superficial. It is gratifying in an age when crime is rampant to indulge in to see the fairy tale of the Dodge City, which was a tough place at the time, it seems, and where four just men—one of them a woman—restore justice every day.[xviii] It is very [much] a nice fairy tale, but you cannot possibly say that it shakes you to the bottom of your being as a tragedy would. It is an interesting part of the [development] of the element of a certain superficiality which is now I believe more common than it was in former times. It is still a good thing, the detective story, I would say—at least the real ones that do not bring in irrelevancies but stick to the real detection of crime, because they counteract a certain posture which is the opposite of that of the FBI. I hope I make myself understood

Student: Would you attribute this to a modern point of view, or to a Christian point of view?

LS: Pardon?

Same Student: This phenomenon you are talking about.

LS: No, it is a phenomenon of decay, but within that decay it is not the worst. In other words, I rate it infinitely more highly as an element of popular culture than that dance called Twist, for example [laughter], which you surely would not know because you do not look at TV, the only

[xviii] Probably a reference to the popular television program "Gunsmoke."

place where you can see it, I suppose. Good. Now for next time, I have to take up Hobbes again. But I want you to remember the starting point. The starting point for Hobbes is *the* right of self-preservation as *the* source of all possible rights and duties. No further source.

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[1] Deleted "now this notion."
[2] Deleted "So whenever."
[3] Deleted "to."
[4] Deleted "so this was."
[5] Deleted "This is perhaps the strongest statement of Machiavelli's break. "Many have *imagined* republics and principalities which have never been seen nor known to exist *in truth*. And since there is such a distance between how people live and how they *ought* to live, that he who considers only how people ought to live and not how they live will bring about his ruin."
[6] Deleted "teachings,"
[7] Deleted "is."
[8] Deleted "be."
[9] Deleted "either."
[10] Deleted "this."
[11] Deleted "and."
[12] Deleted "a roof over your."
[13] Deleted "what can you."
[14] Deleted "the various"
[15] Deleted "insociality."
[16] Deleted "right way."
[17] Deleted "you know."
[18] Deleted "see many lions and."
[19] Deleted "this."
[20] Deleted "they called these."
[21] Deleted "about."
[22] Deleted "of a tragedy—"

Session 14: November 21, 1962

Leo Strauss: [In progress] —deny that there is any natural right. Hobbes admits that there *is* natural right and he emphasizes it, but this natural right is only a part of what was traditionally thought to be natural right. The change is indicated by [the] term "state of nature," as I said last time. This change is perhaps not as striking as the change which I mentioned before. At least as far as I am concerned, I have observed this first change much earlier than the later one, and in my book on Hobbes[i] I did not speak of the change regarding the state of nature at all. Only in a later reading of Hobbes I was struck by the remark in the preface to his book *On the Citizen*, [where] [1]he says this condition of man prior to society which it may be *permitted* to call "the state of nature," which is an almost an apology for the—.[ii] That set me thinking about it, and then I observed that this is in principle a novelty. I have now the footnote to this, that the term "state of nature" does occur, as I think I said last time. And the clearest remark I know occurs in Suárez's book on the laws, part 2, chapter 18, which those of you who are interested and know a bit of Latin will easily find. Here [a] natural state of man or a pure natural condition is mentioned, in which man has yet not entered *any* society, which is in this sense presocial, but it is understood that man is in this natural state a social animal, a social animal meaning[iii] —of course denied by Hobbes.

Now I have to continue where I left off. And I think the following was the point: [2]Hobbes is looking for a passion which supports natural law. Reason would not give a sufficient support, and natural inclinations simply do not exist anymore for Hobbes. So the basis must be a passion. This passion Hobbes finds in the fear of violent death: fear of death, fear of violent death; this is as it were the root of all goodness and right. But where does badness come from, the malice which one can observe in man? Hobbes's answer generally speaking is: The root of badness is pride—pride, deciding to be superior to others and to be recognized by others as superior. It is clear that this desire necessarily offends everyone else or almost everyone else, whereas the fear of violent death does not in itself have this offensive character. If you want to preserve your life only, you do not possess intention to hurt anyone, whereas if you are full of pride in the sense defined, you will raise demands on others to which they will as a rule resist.

Now the relation between these two passions, these two key passions, fear of death and pride, or self-preservation and pride, can be stated as follows. At first glance, there is mere[ly] an opposition of the two: fear of death, good; pride, bad. But their relation is somewhat more complicated. Hobbes must somehow account for pride in terms of *the* fundamental passion, self-preservation. Pride must be a modification of self-preservation because otherwise he would have to admit a fundamental dualism, a fundamental dualism which he, trying to be a monistic materialist, cannot afford. Now that relation is simple: in order to preserve ourselves, we need power. The effective power which a man can have is the excess of his power over the power of others. To the extent to which the powers are equal, they cancel each other out. So only the

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[i] Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and Genesis*, trans. Elsa M. Sinclair (University of Chicago Press, 1952).
[ii] The tape skips here.
[iii] The tape skips here.

excess of power counts. So we are concerned with an excess of power over others. [3]One effect of [an] excess of power is that the others recognize our excess of power. It thus becomes possible to separate the recognition of our power by others from the solid thing, the power itself. This separation presupposes however the primary connection. Primarily pride as concerned with superiority is a derivative from self-preservation, but a derivative which is capable of making itself independent and then act as it were against self-preservation.

Now let us return to the beginning. The right to self-preservation of each. This right is possessed by everyone equally. Men are by nature are equal in the decisive respect. There are many ways in which they are unequal, but in the decisive respect they are equal. Why? Because every man, however stupid or weak he may be, can kill everybody else. This is simply correct, because he may—the weak fellow can kill the stronger one in sleep, for example, he does not have to kill him in open fight. So everyone can kill everybody else. Hence everybody is equal to everybody else in the most important respect. Or as Hobbes states it more neatly: Everyone can do the greatest, do the greatest, the maximum—namely, kill him—to everybody else. If two people are equal regarding the greatest, they are equal in the most important respect.

Now everyone then is equal in the decisive respect and therefore everyone has equally the right to self-preservation. But if he has the right to self-preservation, he must of course have the right to the *means* for self-preservation, because otherwise the right would be nugatory.[iv] Now the question arises: [4]What are the right means for self-preservation? Because no one has the right to things which have nothing to do with his self-preservation. Who is to judge? Traditionally it would have been the man of practical wisdom. The man of practical wisdom. But this leads to a difficulty: not all men are men of practical wisdom. What shall the men lacking practical wisdom [do]—or let us [say], for simplicity's sake, the fool, what about his? Has he not the right to choose means for self-preservation as he in his folly believes to be good means? The alternative would be this: to deny to him and say that he should first get advice from a man of practical wisdom. But then Hobbes argues rather toughly that the man of practical wisdom, the wise man, is necessarily *less* concerned in the fool's preservation than the fool himself. So it is fairer, more equitable to say the fool should be the judge, however foolishly he might judge, than the wise man who is a better judge but less interested, has less at stake, in the preservation than the fool himself. So then it follows that everybody is equally a judge of the means as everybody else.

This leads to further consequences, which I will explain briefly. I will make only one comment. The fact that everybody can kill everybody else justifies equality. All men are by nature equal, on the ground given. There is no natural superiority or inferiority if all men are by nature equal. All society and all legislative power must therefore be derivative from consent or contract. We see again here something which comes out whenever one things about these things more deeply, we have been compelled to make a distinction between the principle of consent and the principle of wisdom. I spoke of that when I spoke of Plato. Now for Hobbes *consent* is the fundamental phenomenon, not wisdom. But the basis of the consent principle [5]was from the very beginning bodily power, whereas the basis of the wisdom principle is the power of the mind. This is only confirmed by an analysis of Hobbes.

[iv] *Leviathan*, chap. 14.

Now let us again return to the beginning. We have men in the state of nature completely under the spell of their passion, and in the clearest case under the spell of the passion of pride. Everyone wants to lord it over everybody else. This leads of necessity to conflict between everybody and everybody else, the famous war of everybody against everybody, and then everyone can easily see that this is an impossible condition. Self-preservation is in constant danger, and one must get out of that state. But the first reaction is that when you are confronted with this situation, you walk, you strut around claiming submission from everybody else, cocksure, and then the other fellow threatens you. And then you may come to your senses and say, "I am very foolish to demand so much. I want only to preserve dear life, that minimal, which I cannot but will to preserve." So you become chastened and you are concerned only with that claim which is unqualifiedly just, the *only* claim which is unqualifiedly just, the claim to self-preservation. And then for the reason given before I said it follows that he has the right to the means but in such a way that everybody is the judge of what are the means.

And now we see this paradoxical consequence. If everybody is fundamentally honest [and] only wants to preserve himself, but everybody is the judge of what are the means for self-preservation, we arrive at the same result as when we start from the dishonesty or pride of everyone, the war of everybody against everybody. So in the state of nature unjust intentions and just intentions lead exactly to the same result, yet with one difference: the case of the proud people is hopeless. The case of the people concerned only self-preservation is not hopeless, because what we fundamentally want, self-preservation, is compatible with the way out. The way out of course is *peace* on the basis of equality. While the actions of the just[6] man are undistinguishable from the actions of the unjust man, the intention of the just man differs radically, already in the state of nature, from the intention of the unjust man. The state of nature as a state of universal war is incompatible with self-preservation. You can perhaps take this image of the situation. You lie—you are in a foxhole, you are lying in a foxhole, but the enemy is not only there. In all other foxholes around you, there are also your enemies, leading a very—you cannot crawl out and get a turnip without being shot at, as it were. So—[v] for peace which follows with necessity from the right to self-preservation leads to the first natural law from which all other natural laws are derived: thou shalt seek peace. This is a duty, not a right. And we see here that the law of nature, the natural law, is derivative from the natural right. The right is primary. In the state of nature there is only a natural right, not yet a true duty, because you cannot be under obligation to do something regarding peace as long as you are not sure that the others too are peaceful. Or there cannot be peace without trust, and how can you trust the others? Natural law is *derivative* from natural right. And this is perhaps the simplest formula for the radical change which Hobbes has effected.

Let me add this point on this. I mentioned this I believe on a former occasion. The traditional term was natural law. In the eighteenth century, people came to speak of the rights of man. This I think reveals in a nutshell what has happened. Law, rights: law, meaning the primary phenomena are duties, not rights. And the other change is no less interesting: nature, man. If one could develop that fully, we would come back to the great change effected by Descartes, where the whole, the primacy of the whole, is replaced by the primacy of the ego. And I think it is no accident that in Descartes's published work on moral matters, *The Passions of the Soul*, there is a

[v] The recording skips at this point.

single occurrence, in the center of the book somewhere, of the term "rights."[vi] The word "duty" never occurs there, that he actually stated.

I can also illustrate this as follows, because it is truly absolutely crucial, the change effected by Hobbes and in a way by Descartes here. Let us again look back to Aristotle. Aristotle starts from the end of man and the most popular expression for the end of man is happiness. Happiness. And [7]man cannot live happily except as a member of the *polis*. The city exists for the sake of man's happiness. Now the thought which emerges in modern times can be stated as follows: happiness is a term without any definite meaning. Happiness is radically subjective. Different men have different views of happiness; the same man has different views of happiness at different times. That is not a solid [8]basis of moral and political philosophy. We must proceed in an entirely different way. It is true, all strive for happiness, but each understands happiness in a different way. Yet one thing we can say: However differently men understand happiness, each one wants happiness as he understands it. There is a formal element in common, a common core. And this means we can speak universally and solidly about the *conditions* of happiness. You cannot be happy if you are not alive. You cannot be happy if you cannot circulate, because at least some people understand by happiness something that you have to circulate in order to get it. And thirdly, you must of course have the right to pursue happiness as you happen to understand it. You have life, liberty, and pursuit of happiness. They are universal, they are objective, in spite or because of the subjectivity of the content of happiness. This is clear? And this is the character of the new doctrines, that not happiness is the peg on which everything is hanged, but the conditions of happiness.

And this leads furthermore—I make now a big jump to late eighteenth century and to some extent even present-day thought, but this is all related to this basic change—you have then this situation. The state is absolutely limited in its function to preserving the conditions of happiness; life, liberty, the pursuit of happiness, and the state has absolutely nothing to do with happiness itself. How each fills out the blank, happiness, is strictly private and wholly left to the private man's arbitrariness. Now each one pursues that happiness as he understands it. And this striving takes the character partly of course of antagonism, because people do understand different things by happiness, but there are also agreements. So something emerges which consists on the basis of state-secured conditions of happiness which is partly competitive and partly cooperative. This I believe is the primary meaning of what society came to mean. Society, we may say, is a web produced by cooperative competitive striving of the individuals, each for his own happiness. And you can see [9][that] the distinction of state and society, which has real meaning today, is for this reason absent from earlier thought. You see here also the complicated relation of state and society. From one point of view the state is clearly superior to society, because the state has to do with that which is universally valid, which is objective, the conditions of happiness, and society has to do with the subjective. But on the other hand, the conditions of happiness are of course only the means, happiness itself being the end. From this point of view society is higher than the state. And this indecisive situation, that the state is and is not superior to society, is I think characteristic of the basic state of modern thought. Now this has been affected and modified since considerably. I cannot go into that now. Let me proceed where I started. Yes?

Student: One of these elements in modern society is the shift from right to duty?

[vi] Descartes, *Passions of the Soul* (1649), art. 152.

LS: Yes—no, no, no. That was a sheer slip. I meant from duties to rights. Sure, absolutely. Could you tell me? No, that was . . . I mean, it is easier to say we have rights than to say [that] today is the twenty-first of April. Fine.

Now let me continue. Peace is then *the* basic demand on us, basic duty. But it is not difficult to see that men cannot live in peace if they do not acquire or possess certain habits, peaceful habits. They must be tolerably nice, accommodating, friendly, and so on, if there is to be a solid peace. Now in other words, peace requires these good habits—they are good because peace is good—and these are the virtues. So the necessity of the virtues and their character follows strictly from the whole argument starting from the right of self-preservation. This implies that all virtue is essentially social; all virtue is justified by its contribution to peace. Again, let us look back at Aristotle. In Aristotle's *Ethics*, there are two peaks of the ethical teaching. One is justice in the widest sense of lawabidingness, and this is of course somehow preserved in Hobbes. The other is magnanimity; one can say the perfection of the individual as individual. This magnanimity, also translated as generosity, was used as a key moral concept by Descartes in his *Passions of the Soul*, and he as it were dropped justice, whereas Hobbes ordinarily preferred justice to generosity. This is only in passing, although I think it throws some light on some things which I have said.

The conclusion of this point, the doctrine of natural law, i.e., of the implications of the law commanding us to seek peace, is identical with moral philosophy. In the traditional view, there was always identity in a sense, but not unqualified identity. Here we have *complete* identity of natural law and moral philosophy. Now this duty to act according to natural law in Hobbes's sense, the duty to act peacefully, cannot be a perfect duty, i.e., something on which you are obliged to act if it is not safe to do so, obviously, because the whole thing serves the purpose of self-preservation. You cannot be under any obligation to throw the other fellow a turnip from your foxhole into his if you can't be sure that it will not transform itself into a hand grenade and throw it back. So in other words, the duty to morality arises only if there exists a power to which all obey because it protects all, because it guarantees the peace. What is necessary is then universal disarmament, of course of the civilians, but you must see there is a parallel between that and the relations between nations. Ya? But this parallel is not arbitrarily introduced by us. For Hobbes the relation between states is exactly the same as that between individuals in the state of nature; therefore what we call international law, to the extent to which it is law, is identical with the natural law, with the natural for the individuals in the state of nature, only there is no common power to overawe the states, and therefore this law is no more than a pious wish. That is another matter. But the structure is the same. The structure is the same. And Hobbes's great innovation at this point was the simple identification of international law with the law of nature, with national law.

So we need then such a power, common power, over all equally. How can we get it? The starting point is the unobliged and unbound individuals, where no one is by nature superior to everyone else. The only way to get out of that is consent, more specifically contract. These individuals, each in his foxhole, call to each and then they make a deal. And this contract is a contract of course only among the individuals. This contract among individuals has this character: we disarm, and we subject our—we become one society by virtue of our common submission to a

single power. There is only a contract which is at the same time a contract of association, the social contract, and a contract of subjection. According to the ordinary form, the pre-Hobbean form of this theory, there are two contracts. First, the individuals contract in order to establish a people, a society, the social contract; and then after having become a people, they make a contract with a man or body of men that that man or body of men should be the ruler, prince, king, or whatever it may be, and they the subjects, and this is the contract of subjection. Hobbes changes that radically, and course Hobbes's solution is theoretically much more elegant, because otherwise we have the terrible situation that there is a contractual situation between king and people and there is no third party to settle a case of conflict. You know? Whereas here in Hobbes the thing is completely settled, because there is only one power in control and that is the sovereign. The individuals contract with each other and they surrender all their power to the sovereign. It is a contract in a sense to the *benefit* only of that other party, the sovereign. In fact, of course, they are prompted by their self-interest. They want to have peace.

Now [10]this is of absolutely crucial importance in very many respects, showing itself most simply in Hobbes's definition of the state or the commonwealth. The commonwealth is not defined in terms of being an association arising for the sake of mere life, or being for the sake of the good life as Aristotle said, but this. The commonwealth is "one person of whose acts the great multitude by mutual covenants with one another have made themselves every one the author, to the end he may use the strength and means of them all as he shall think expedient for their peace and common defence."[vii] The state, the commonwealth, is a *person*. For the first time this statement occurs in Hobbes. I looked up the most famous political writers in the sixteenth-seventeenth century and earlier, and nowhere does the term "person" in the definition of the state occur prior to Hobbes.

Now what does a person mean? A person—Hobbes takes his term from Roman law. A person, mask, representative. A person is someone who acts on my behalf but is more than a mere agent. He *represents* my will. My will becomes effective only through his will. So if the sovereign—let us take the simplest case, a king—acts, everything he does, I have authorized in advance. I remain as free as I was before, as Rousseau calls it later; exactly the same thing is true of Hobbes. The sovereign is identical—the sovereign's will is identical with my will, with my rational desire. My *irrational* desire is of course not to pay taxes, or not to go to war, or whatever it may be. But that is not my will, because my will is concerned with my self-preservation, and my self-preservation has as it were taken on flesh in the sovereign who exists for the sake of preserving me. And I cannot take care as well of my self-preservation as the commonwealth or sovereign can, obviously, because I am much too weak. Every individual is too weak. But the sovereign guarantees peace, guarantees self-preservation, and therefore he represents me.

Now this leads then—Hobbes's is generally known as *the* classic of the doctrine of sovereignty. It was begun in that modern way by a French thinker in the sixteenth century called Bodin, but Bodin's doctrine of sovereignty[viii] is a very lame thing compared with Hobbes's doctrine. And you find this in all his works, for example, in the *Leviathan*, in chapter 18 especially, where

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[vii] *Leviathan*, chap. 17.

[viii] Jean Bodin, *Les Six Livres de la République* (1576). See *On Sovereignty: Four Chapters from Six Books of the Commonwealth*, ed. and trans. Julian Franklin (Cambridge: Cambridge University Press, 1992).

Hobbes enumerates all the implications of sovereignty. For example, the subjects cannot change the form of government. Sovereign power cannot be forfeited. No man can without injustice protest against the institution of the sovereign declared by the major part. The sovereign's actions cannot be justly accused by the subjects. Whatsoever the sovereign does is unpunishable by the subjects.

Now in order to understand the paradox, we must never forget [that] the ordinary reader, at least in seventeenth century, thinks in terms of the ordinary understanding of sovereignty where, say, the king of England was of course the sovereign. And these were very questionable things from the point of view of positive law. But Hobbes understands sovereign in the strict sense, as dictated by the new kind of natural law. One moment. The doctrine of sovereignty, this must be made very clear, is a doctrine not of the public law of any country. Almost all countries did not have a sovereign in Hobbes's sense. It is a doctrine of *natural* public law, a public law derivative solely from natural law and ultimately from the right of self-preservation of each. Hobbes's doctrine of sovereignty is a radically revolutionary doctrine, as he very well knew. From this point of view there was no question, if the English public law speaks of a king in Parliament, that this is a division of sovereignty which is unbearable. Either the king or the Parliament would have to be sovereign. The English fought the Civil War about it. At some time there was the king as the sovereign, and at other times the Parliament. And since Hobbes did generally speaking prefer monarchy to any other form, he was vindicated when out of that rule of Parliament there emerged the rule of Cromwell, which was again monarchic sovereignty. And later on of course at the Restoration he . . . The key implication of the doctrine of sovereignty I would say is this. The sovereign is of course the *present* sovereign—elementary, but not always considered how important that is. Otherwise, if the sovereign were a kind of permanent sovereign, say, the royal family or the entity called the nation, then the present-day legislators would always be limited by the permanent will of the society as distinguished from the will of the present generation, to say nothing of the will as it exists on November 21, 1962. The key implication of the doctrine of sovereignty, to repeat, is that the sovereign is the *present* sovereign, and this means it is a radically revolutionary doctrine. At any time the sovereign may call into question all the previous laws and institutions, a point which becomes particularly clear in Hobbes and Rousseau, but which belongs essentially to the doctrine of sovereignty as such. Now you wanted to say something.

Student: I am not clear about this definition of sovereignty. When you say "the present sovereign," what amounts to Hobbes's change thus far?

LS: Change of the—?

Same Student: The social contract was made with only a hundred people and the establishment of the Leviathan is by grant, not subject to recall, in other words . . . Now where does the variation come? In the form of what has been granted so that . . . king . . .

LS: Cannot legitimately change. It cannot legitimately be changed. It can only be changed by rebellion, a heinous crime according to Hobbes. Nothing can be done. What can happen is this: there would be a foreign conqueror, ya? William the Conqueror, and then king Harold being unable to protect the English men any further, William *protecting* them from now on; according

to all rules of equity, they have to be dutiful subjects of William and no longer of that Harold, who cannot protect them anymore. So that—now what is true of the goose is of course true also of the gander. In the case of successful rebellion, Cromwell, it is *criminal* to be loyal to the pretender, the then-pretender [and] later king, Charles II. Hobbes, as a very correct man, made his peace with Cromwell. Ya? Perfectly, and that was the only honest thing to do, because Cromwell was the only man who had established peace and security for the English people. And Hobbes was not sure of his life anymore in Paris, because the royalists had seen that he was not absolutely one of their boys, and so he returned. By the way, Hobbes's life is a beautiful commentary to his whole philosophy. As he said, you know: fear of violent death. [Laughter] And he was—he says of himself that when the Civil War came in 1640, and he was slightly compromised by his *Elements of Law*, which had been privately circulated, that then he immediately left; and he said of himself: I was one of the first that fled. I mean, consistency *is* something. Now you?

Student: If he considers all this pride and this desire to dominate over others, who . . . who are the sovereign, doing the same thing?

LS: That is a very good question. But you can say Hobbes's book—I mean, the most scientific book which he wrote on politics is *On the Citizen*, *De Cive*. He never wrote *De Principe*, *On the Prince*. So if he had—you know, that was very shrewd, because then he would have had to say something about what the prince may or may not do and especially what may profit him. Now in *On the Citizen* his argument is this: If you have absolute hereditary monarchy where the throne devolves automatically to one man, the heir—*the* heir to the throne—there is no place for ambition on the highest level. No one can become a king, only this man without any merits of his own. It is not a matter which is open to ambition. Whereas in a republic or any elective regime, then they can run for the highest office in the land, and this of course boosts ambition and pride considerably. That was his argument. The regime which is most opposed to pride in Hobbes's interpretation is absolute hereditary monarchy. This sounds strange, but there is of course an element of truth in it. Yes?

Student: So in that sense the original—the origin of the state is by contract then . . . both parties of the contract have duties toward each other.

LS: No, they cannot have, because the prince never contracted with anybody. Everybody else contracted with everybody else to the benefit of the prince. This is absolutely important from Hobbes's point of view if the prince is to have free hands for always doing what is necessary in order to protect the peace in the land and to protect the people against foreign enemy. You must admit that there is a certain advantage that you do not need cumbersome procedures, especially in foreign relations, but also regarding law. If the laws are in a terrible condition and this has to be done by a regular legislative action, it can take years and years. Ya? But if there is a man with a free hand he can do it well. This is of course the immediately revolutionary meaning of Hobbes's doctrine.

Student: Does his doctrine of self-preservation impose a limitation on what the sovereign can do? Because no one can take the right to self-preservation.

LS: I'll come to that later. But primarily the first statement, which I read to you, said: Not only no writ runs against the king—that goes without saying—but there is even not the possibility of *judging* the king in terms of justice and injustice, because you have given him and you *are* giving him every moment the right to do whatever he deems fit. Mr. Butterworth?

Mr. Butterworth: This may be premature . . .

LS: In the Hobbean doctrine, this is very simple. The people made the original constituent assembly, ya, in the foxholes. They may establish a monarchy or a rule of the few or democracy. If they . . . they are free to do so. The only thing which they cannot do if they want to act rationally is to establish a *mixed* regime, because that means the division of sovereignty. Hobbes asserted this almost only his private opinion, a bit more, but surely not as a deductive consequence, that absolute monarchy is the best. But this was his conviction, and the meaning of his doctrine becomes clearest if you think of absolute monarchy.

Student: . . . that there are two contracts in Hobbes?

LS: No, no, never. *Never*. Regarding Hobbes, there was never any doubt about that. Regarding Locke there may some doubt on the basis of superficial reading, but even in the case of Locke there is only one contract in the *Second Treatise*. And [this is the case] surely in Rousseau, only Rousseau turns it around, and we will speak about that later; the fundamental contract is a *social* contract, not the contract of subjection. One can state it with a view to Rousseau . . . visible in Rousseau; one can state Hobbes's opinion as follows: there is only one contract, the contract of subjection, which *implies* [11]the sovereign contract. And in Rousseau you can say there is no contract of subjection, there is only the contract, the social contract which is of course also a contract of subjection, namely, to society. You know when these fellows [are] in the foxholes, their first step is of course something like subjection to what the majority will decide, and that it is subjection; and this subjection to society is as absolute even in Locke as the subjection to the sovereign is in Hobbes. Ya?

Same Student: The reason that I asked, in Rousseau . . .

LS: Ya, but in Rousseau the sovereign is always the people, whereas in Hobbes the sovereign may be the people, may be the few, may be a king. In other words, Rousseau took the view which has proved to be victorious, on the whole, that the only legitimate sovereign—but sovereign in Hobbes's sense, no strings attached of any kind—is the people, whereas Hobbes says: No, why should it? Maybe, but should not [necessarily]. That depends on the will of the constituent assembly in the given society. Mr. . . .

Student: . . .

LS: I got your point. Let us read that here in this section about the rights of sovereignty; I only have to review the headings. "The sovereign is judge of what is necessary for the peace and defense of his subjects and judge of what doctrines are fit to be taught them." "The right of making rules whereby the subject may every man know what is so his own as not other *subject* can without injustice take it from him," meaning the sovereign *may* take it from him, of course.

"To him also belongs the right of all judicature and decision of controversies." "And of choosing all counselors and ministers, both of peace and war," meaning no noble family can claim to have a right to sit in such a council, for example. "And of rewarding and punishing and that (where no former law has determined the measure of it) arbitrarily." "These rights are indismissible and can by no grant pass away without direct renouncing of sovereign power."[ix]

He does not state it here, but clearly according to Hobbes his sovereign is of course perfectly [capable as] the present sovereign [12][to] determine his successor. And if he would say, "After my death there should be a republic," then of course they can do that, as I understand the Hobbean doctrine. That was your question. I think so. Yes?

Student: Can sovereignty . . .

LS: Can sovereignty itself—?

Same Student: . . .

LS: Ya, but since he is not bound, he is free to do so. That he could, yes, but then he would completely cease to be a sovereign, and that other man or other men would become the sovereign who would not have to give it back to him if he changes his mind. Ya, good.

Student: I am little confused about the distinction . . . sovereign as one. What about . . .

LS: Because . . . we do not know who has to say. Then we have, you know—let us assume . . . one is responsible for the defense of the realm and the other is responsible for the treasury. But if they do not have to agree, they have deadlock; and there must be a man or a body of men who has the right to determine the case of a deadlock, and Hobbes says this man or body of men is the sovereign. The man or body of men is entitled if he wishes to get rid of this clumsy arrangement where there are two equal powers independent of each other. There cannot be a separation of powers, according to Hobbes.

Student: Does that mean there is an absolute assembly—

LS: Ya?

Same Student: which would decide—is there any administrative body . . .

LS: No, in any republican regime there must state it, but the king . . . they are simply appointees, nothing more. They do not have an *inherent* right; it is all derivative right. There was someone else. Mr. Miller?

Mr. Miller: . . .

[ix] These headings are from *Leviathan*, chapter 18.

LS: I cannot answer that question. I would assume he could, but I do not remember at the moment any explicit saying of Hobbes. The difficulties—I will speak of the difficulties with which Hobbes comes, but I do not recall that they arrive on this level. Yes?

Student: I was wondering if there is not implicit in this doctrine the right of revolution, in that when a sufficient number of individuals has a sufficient strength . . .

LS: And Hobbes definitely rejects that, but what he admits is that, for example, if the sovereign and his line has not their power, as it happened in England, then there exists no longer any duty of obedience. Obedience and protection are reciprocal. That is roughly Hobbes's formula. You must obey as long as your sovereign is willing and able to protect you. That is clear. I mean, if he ceases to protect you, if there would be complete anarchy—say, the War of the Roses—then of course there is no sovereign then: that is the state of anarchy. That is another matter.

Student: Likewise, if there is a sufficient number more powerful than the sovereign, you would have—

LS: Ya, but Hobbes is in this respect a strict moralist because these are criminals who raise a flag of rebellion, and that the greatest crime which a man could commit should be *rewarded*, ya, is absolutely shocking to him, if they come to power afterward. Of course he admits that when it has happened, when it was successful, you have no choice, but it is an awkward situation for him.

Student: On the individual level, the individual always retains his right of self-preservation—

LS: I'll take this up immediately as soon I can get in a word edgewise. [Laughter]

Student: . . .

LS: No . . . they can shoot that. I come to that. Please. Good. The Hobbean doctrine of sovereignty is very well-known, and it has very great effect also on academic teaching via such people as Pufendorf[x] and so on. And needless to say, the democratic doctrine of the sovereignty of the people is strictly out of Hobbes. The complicated situation which you have in this country especially and also elsewhere, this is not a strict doctrine of sovereignty, because who is the sovereign in this country? Pardon?

Student: . . .

LS: The people. But the people, you know, they elect, and their sovereignty is not very visible, so to speak. I mean, only in the case of amendments can it become visible, with severe limitations as you know. So therefore people were compelled in the nineteenth century to restore in a way the Hobbean doctrine of sovereignty. They were compelled to bring up the subject, distinctly called it the *legal* sovereign, i.e., which meant who is really actually decisive for all measures. The people do not pass laws. Ya? The people do not pass laws. And as a consequence of these complications, sovereignty has survived in the full sense at the most in international law,

[x] Samuel von Pufendorf (1632-1694), author of *Of the Law of Nature and Nations* (1672).

not in the domestic law, because of the complication. The construction here is, as you know: the people is sovereign. As a sovereign, the people has *delegated* this power to the legislative, this power to the executive, this power to the judiciary. These are all delegated powers, and yet these delegated powers together [13][constitute] of course the whole public power; and there is no way anymore on this basis for the assertion of the will of the people, of the sovereign, in contradistinction to the will of the delegated powers. As you may know from the fate of Mr. Anastaplo,[xi] a right of revolution is not recognized, a right of revolution meaning in strict construction the right of the *sovereign* to assert himself against those to whom he has delegated the power. And the tacit premise of course is that this is *better* for the people, to delegate their powers away under the conditions of the separation of powers than to preserve it and have anarchy, which is a good point. But the basic premise of the sovereignty of the people is of course still underlying the Constitution—the very first word of the Preamble.

Now I bring up now this point which all of you, almost all of you, have felt, namely, the question simply stated: Concerned with nothing but my self-preservation, I want to have a very effective police force, ya—I mean, you still do not get that necessarily [14]even if you are an obedient subject, but this is a hope with which we entered civil society, not to be shot at by gangsters or by anyone else. So I enter society in order to preserve myself, but what if the sovereign turns against me? He may just delight—be trigger-happy and go around and shoot and so on. Hobbes has taken care of this question as well as he could in that chapter of the *Leviathan* which is much less known than the chapter on sovereignty. That is chapter 21, "Of the Liberty of Subjects." I cannot read to you the whole chapter, of course, but I will read to you some very revealing sentences.

"[S]eeing soveraignty . . . is by Covenant of every one to every one . . . [i]t is manifest, that every Subject has Liberty in all those things, the right whereof cannot by Covenant be transferred . . . Therefore, if the soveraign command a man, (though justly condemned,) to kill, wound, or mayme himself; or not to resist those that assault him; or to abstain from the use of food, ayre, medicine, or any other thing, without which he cannot live, yet hath that man the Liberty to disobey."

Now look at the most interesting case implied here in this long enumeration. Who are those that assault the justly condemned man? I suppose the men who bring him to the hot seat, as it is vulgarly called. The man has killed *n* other men; he is justly and ethically condemned to death, and then he is supposed to pay the penalty for that. This man may *resist* those that assault him, i.e., if he can make a break he has the natural right to do so.

Now that is extremely interesting. Primarily no man has the right to resist arresting officers of course.Ya? Through his murder and his condemnation, he has acquired the right to resist assaulting officers. You must admit Hobbes is in a way very consistent. [Laughter]

"If a man be interrogated by the Soveraign, or his Authority, concerning a crime done by himselfe, he is not bound (without assurance of Pardon) to confess it [the Fifth Amendment—LS] [laughter]; because no man (as I have shewn in the same Chapter), can be obliged by Covenant to accuse himselfe.

[xi] See footnote at the end of session 6.

"Again, the Consent of a Subject to sovereign Power, is contained in these words, *I Authorize, or take upon me, all his actions*; in which there is no restriction at all, of his former naturall Liberty: For by allowing him to *kill me*, I am not bound to kill my selfe when he commands me. [But the command to kill myself means of course not to resist those who bring me to execution—LS] 'Tis one thing to say, *Kill me, or my fellow, if you please*; another thing to say, *I will kill my selfe or my fellow*."

That is the precise distinction. Good. Now:

"Upon this ground, a man that is commanded as a Souldier to fight against the enemy, though his Soveraign have Right enough to punish his refusall with death, may neverthelesse in many cases refuse, without Injustice, as when he substituteth a sufficient Souldier in his place: for in this case, he deserteth not the service of the Common-wealth. And [now this is the true Hobbes—LS] [laughter] there is allowance to be made for naturall timorousnesse, not onley to women (of whom no such dangerous duty is expected,) but also to men of feminine courage."[xii]

And now follows a description of what is going in battlefields, which I believe is unique in the whole literature of the world and which only Hobbes could have written: "When armies fight, there is on one side, or both, a running away [laughter]; yet when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonourably." It is *only* a dishonor, but not a crime, and so on. This is all very revealing. This is the liberty of the subject.

Now let us see. How can we get out of this difficulty? I mean, [15]I entered society in order to preserve myself, and now I have the misfortune of killing another man, and condemned to death; and then I lose my life. And I contracted to protect my life. There is a certain difficulty, and the difficulty was solved not by Hobbes but in the late eighteenth century by Beccaria,[xiii] a famous penologist who drew the conclusion from Hobbes's premise that capital punishment is *illegal* because it necessarily contradicts the social contract by which I entered in order to protect my life. Now the other point of military service: if you take this passage seriously, you cannot have an army. You cannot have an army on this basis. You cannot have defense, and you cannot have the state. Now the only solution here would be a world state with a guaranteed abolition of war. Now Hobbes was very far from drawing the conclusion, but one must say in fairness to this kind of pacifist that this is indeed the only way in which Hobbes's doctrine can be made consistent: abolition of capital punishment, abolition of war. Then there is at least never a governmental action endangering the life of anyone. Now these difficulties, while they are in a way fatal to the doctrine as stated by Hobbes, are not fatal to his principles if you add these points I mentioned.

I turn now to other difficulties. It is clear from Hobbes's doctrine of natural law that the natural law is binding on every human being once civil society is established, and therefore it should seem that it is binding especially on the sovereign. Hobbes has written chapters on the duties of the sovereign which are in a way circumscriptions or descriptions of what the natural law obligations of the sovereign are. Generally speaking, he must rule humanely, we can say, [16]in his penal law, but also in every other respect. And this affects especially punitive justice and

[xii] *Leviathan*, chap. 21.
[xiii] Cesare Beccaria (1738-1794), author of *On Crimes and Punishments* (1764).

administration of justice. And these remarks [17]should be read by you, especially those [of you] who are interested in public and penal law. In chapters 26 and 27 you will find these statements. In other words, what Hobbes's political [18]doctrine, we can say, amounts to is this: To give absolute unqualified power to the sovereign, preferably to a monarch, so that he should use the power as a sensible, enlightened monarch—and not of course like a Nero, that goes without saying. Hobbes is *the* teacher of what came to be called enlightened despotism, but definitely enlightened despotism. He was not just enamored of absolute power as such.

But there is a difficulty here, in chapter 30. There are many other statements to the same effect:

"To the care of the Soveraign, belongeth the making of Good Lawes. But what is a good Law? By a Good Law, I mean not a Just Law: for no Law can be Unjust. [Why? Because every law is the work of the sovereign, and the sovereign cannot do you any injustice, because what he does, he does authorized by you. He is your rational will.—LS] The Law is made by the Soveraign power, and all that is done by such Power, is warranted, and owned by every one of the people; and that which every man will have so, no man can say is unjust. [No one can do injustice to—*volenti non fit iniuria*: to the willing man no injustice can be made—LS] It is in the Lawes of a Common-wealth, as in the Laws of Gaming: whatsoever the Gamesters all agree on, is injustice to none of them. A good Law [in contradistinction to a just law—LS] is that, which is *Needfull*, for the *Good of the People*, and withall *Perspicuous*."[xiv]

And then he develops this in a very sensible way. So, no—but the key point: No law can be unjust. As a consequence of his doctrine of sovereignty Hobbes teaches [that] the distinction between the king and tyrant, between the just monarch and the unjust monarch, is absolutely arbitrary. And here we hear the voice of present-day social science. From Hobbes, he says: Well, what do you mean by a tyrant? That is a monarch whom you don't like. And when you say, "The king," you know, you have this, he says this explicitly: No distinction between king and tyrant can be made because both are sovereigns. And yet it is very clear that Hobbes, by his doctrine of natural law, establishes very clear criteria in the light of which to distinguish between a king and a tyrant. In other words, his action which was mentioned—if he would just run around and shoot his subjects—it is perfectly clear that this is an unjust action contradicting the meaning of his office, a tyrannical action; and yet Hobbes says you cannot speak of tyrannical actions in the case of the sovereign. This is a truly fundamental defect of Hobbes's doctrine.

The other great difficulty which we find in Hobbes's doctrine is this: *unqualified* submission to the sovereign is absolutely inevitable, sovereign being a man or a body of men. But then the great difficulty arises: Must one not obey God rather than man? This is not identical with the question of natural law to which we referred, but this is of course akin to it. Hobbes had [of course considered this]; half of the *Leviathan*, the second half of the *Leviathan*, i.e., a very large part of the book, is devoted to this question. Hobbes's argument is roughly as follows. The will of God is known by natural reason or by revelation. Now as for the will of God which is known by natural reason, that is of course natural law, and we have spoken of that before. The will of God as known by revelation is divine positive law. His very precise argument is however this. The first natural law is to seek peace, *not* the law commanding the virtues, the specific—peace and the specific virtues. If there should be a conflict between your duty to seek peace and

[xiv] *Leviathan*, chap. 30.

between your duty to obey only a just prince, the first duty has the right of way, because all moral duties proper are consequences from the duty to seek peace. In case of conflict, the demand to seek peace, i.e., to be submissive to the sovereign, takes precedence.

But what about God's revealed will? Now Hobbes has a very long discussion in the second half of the *Leviathan*, and the answer is roughly this. God's will is supposed to be known by the Scriptures. But how can the Scriptures be known to be the word of God? Answer: that cannot be *known*; it can only be *believed*. And the belief can become a duty *only* by the act of the sovereign. Therefore, the interpretation of the Scripture is of course also the[19] [business] of the sovereign: no conflict. In other words, even if there is an atrocious conflict between a clear biblical command and a law of the sovereign, then the sovereign will surely find people appointed by him who will say, "This is *the* interpretation of the biblical passage," and the difficulty will have disappeared.

We cannot leave it at this, however. Let me tell a few passages from *Leviathan* about this point. This is: "The Laws of God therefore are none but the Laws of Nature, whereof the principall is, that we should not violate our Faith, that is, a commandment to obey our Civill Soveraigns, which wee constituted over us, by mutuall pact one with another. And this Law of God, that commandeth Obedience to the Law Civill, commandeth by consequence Obedience to all the Precepts of the Bible, which . . .[xv] is there onely Law, where the Civill Soveraign hath made it so; and in other places but Counsell; which a man at his own perill, may without injustice refuse to obey."[xvi] That seems to be the solution.

Another parallel, which is much more interesting. The key question becomes in *practice*, at least in the seventeenth century, what a man or a Christian is supposed to *believe* in contradistinction from action. And now a conflict does not arise if the sovereign is a Christian. And Hobbes says in his construction there is only one dogma which is absolutely commanded for salvation by the New Testament, and that is the dogma that Jesus is the messiah, and which every Christian by definition believes. You see the non-Trinitarian character of this dogma. By the way, Locke's view of the New Testament is exactly identical at this point with Hobbes. So every Christian as Christian admits that Jesus is the Messiah. There can be no difficulty. But if the sovereign is an infidel, what happens now? That is interesting [laughter] because here you see the real Hobbes. In the other case, the difficulty does not appear.

"And when the Civil Soveraign is an Infidel, every one of his own Subjects that resisteth him, sinneth against the Laws of God . . . and rejecteth the counsell of the Apostles, that admonisheth all Christians to obey their Princes, and all Children and Servants to obey their Parents, and Masters in all things. And for their *Faith*, it is internall, and invisible; They have the license that Naaman had [the story in the Old Testament, meaning to obey idols—LS], and need not put themselves into danger for it. But if they do [if they do, in other words, if they disobey an infidel prince who commands idolatrous services—LS], they ought to expect their reward in Heaven, and not complain of their Lawfull Soveraign, much less make warre upon him. For he that is not glad of any just occasion of Martyrdome, has not the faith he professes, but pretends it onely, to set some colour upon his own contumacy. [This sentence he omitted in the Latin version, after

[xv] In original: "(as I have proved in the precedent Chapter)"
[xvi] *Leviathan*, chap. 43.

the Restoration. But then he goes on and builds a bridge—LS] But what Infidel King is so unreasonable, as knowing he has a Subject, that waiteth for the second coming of Christ, after the present world shall bee burnt, and intendeth then to obey Him [after the second coming—LS] . . . and in the meantime thinketh himself bound to obey the Laws of that Infidel King . . . to put to death or to persecute such a Subject?"[xvii]

So in other words, Christianity understood as Hobbes understands it, that it means no more than an expectation of the second coming, *then* to obey Jesus, because the kingdom of God according to Hobbes's extraordinary teaching was destroyed with the election of Saul. The Jews wanted to have a king like the nations, and then they got a worldly king, like all the nations, and that was the end of the kingdom of God. A very original interpretation of the Bible. And then the restoration will come only in the second coming. In the meantime, there is no kingdom of God, and therefore there cannot possibly be any dualism of the power temporal or power spiritual. I would like to mention only in a later discussion which Hobbes had with the bishop of the Anglican church who was very angry with Hobbes about these remarks, and Hobbes tried to appease him by the remark, by making a distinction that *ordinary* Christians are under no obligation as to martyrdom, only bishops. [Laughter] So that was his way out of this difficulty.

Now this brings up the whole question of the relation between Hobbes's doctrine of sovereignty and uniformity, uniformity of divine worship. The sovereign has the right to permit and forbid any doctrines he sees fit and this applies of course also naturally to religious doctrines and to worship. Now I'll read to you a passage from the *Leviathan*, chapter 31:

"[S]eeing a Common-wealth is but one Person, it ought also to exhibite to God but one Worship; which then it doth, when it commandeth it to be exhibited by Private men, Publiquely. And this is Publique Worship; the property whereof, is to be *Uniforme*: For those actions that are done differently, by different men, cannot be said to be a Publique Worship. And therefore [in other words, either establishment or no public worship—LS], where many sorts of Worship be allowed, proceeding from the different Religions of Private men, it cannot be said there is any Publique Worship, nor that the Common-wealth is of any Religion at all."[xviii]

This seems to be very clear, but I have to reread the first sentence. "A Commonwealth . . . ought to exhibit to God but one worship." In the Latin version of 1668 he says a commonwealth *may* exhibit to God but one worship. So in other words, it is no longer an "ought" but a "may." What Hobbes is ultimately driving at is that it is absolutely a matter of the decision of the sovereign which kind of religious ordering he wants. He is perfectly free to have no . . . of this kind. In the English *Leviathan*, which was written in 1651 under Cromwell, he accepts the independence solution, the solution of . . . independence as *perhaps* the best. In other words, neither bishops nor presbyters, but the maximum of religious freedom. The fundamental difficulty which exists in this point is indicated by the following remarks.

"The force of Words, being . . . too weak to hold men to the performance of their Covenants; there are in mans nature, but two imaginable helps to strengthen it. And those are either a Feare of the consequence of breaking their word; or a Glory, or Pride in appearing not to need to

[xvii] *Leviathan*, chap. 43. Ellipses indicate that portions of the text were omitted in Strauss's reading.
[xviii] *Leviathan*, chap. 31.

breake it. This later is a Generosity too rarely found to be presumed on [you see, realism—LS], especially in the pursuers of Wealth, Command, or sensuall Pleasure; which are the greatest part of Mankind. The Passion to be reckoned upon, is Fear; whereof there be two very generall Objects: one, The Power of Spirits Invisible [that means religion, in Hobbes—LS]; the other, The Power of those men they shall therein Offend. Of these two, though the former [spirits invisible—LS] be the greater Power, yet the feare of the later [of human beings—LS] is commonly the greater Feare."[xix]

Now in a later passage he says, "the fear of Darknesse, and Ghosts, is greater than other fears,"[xx] meaning than the fear of men. So that is a clear contradiction. I think one can solve this in the spirit of Hobbes as follows. The fear of powers invisible is greatest as long as men are not enlightened. As soon as men are enlightened, and only then, will the fear of men become stronger. Now the fear of violent death, I do not have to tell you, is of course the fear of men. So the Hobbean scheme that everything is based on the fear of violent death and not on the fear of any punishment after death, can come its own only on the basis of an enlightenment of the people. At the end of this line, which we do not find in Hobbes himself, we find shortly after Hobbes's death in the book of a French Huguenot, Pierre Bayle, *Diverse Thoughts on a Comet*,[xxi] the view that an atheistic society is possible. As far as I know, that is the first time anyone has ever said that an atheistic society is possible. I think that is the conclusion of Hobbes. Bayle spoke very highly of Hobbes in his philosophical dictionary.[xxii] I do not remember now the exact wording, but it is roughly to the effect that Hobbes is the man who has spoken best, most clearly, most truly about political theory. So I leave it at this point. Now I had hoped I could turn to Locke. I must do that next time. Ya?

Student: I have two questions. The first one is the conflict which you talked about which might arise between the duty to seek peace and the duty to obey the sovereign . . . Is that primary? All other duties . . .

LS: Ya. So in other words, there is no title on which you can resist, except if your own life is endangered by the sovereign or a command of the sovereign. No other title. You cannot resist him on religious grounds, you cannot resist him on moral grounds. But you may resist him on the ground of sheer self-preservation. That is Hobbes.

Same Student: I have a second question. This business of the atheistic society, whether or not it is possible, can come up in another context. I wonder if these men in any way conceived of a society such as Soviet society.

[xix] *Leviathan*, chap. 14.
[xx] *Leviathan*, chap. 29.
[xxi] Pierre Bayle, *Various Thoughts on the Occasion of a Comet*, trans. Robert C. Bartlett (Albany, NY: State University of New York Press, 2000).
[xxii] Bayle opens the entry on Hobbes in his Dictionary with the statement that Hobbes was "one of the greatest geniuses of the seventeenth century." Pierre Bayle, *A General Dictionary, Historical and Critical*, trans. George Sale, et al. (London: J. Bettenham, 1735-41), vol. 6 (trans. John Peter Bernard et al., 1738), 185. First published as *Dictionnaire Historique et Critique* in 1697.

LS: No, no. No, it is extremely doubtful whether men like Bayle meant this as a practical proposal at all, whether he did not merely play with it as a theoretical possibility. I could not answer that question on the basis of what I know.

Student: In my understanding, the basic premise that Hobbes operates on properly, he is going to base natural law on a passion instead of reason in order that passions will not try and contradict it, and this passion is the fear of death. But if the end product, the fear of death, depends upon enlightenment—

LS: No, no, the fear of death doesn't depend on enlightenment, but the full effectiveness of it does. In other words, one can state it as follows. By nature, the fear of death would lead men naturally, automatically to establish a police force. Ya? Good. And we had a sovereign with very big teeth, very big teeth. But why does it not happen? Because there is another fear, the fear of powers invisible, which contradicts it. Now this twofold fear finds its political expression in the twofold powers, power temporal and power spiritual. And on the basis of the experience of sixteenth-seventeenth century it could seem that if the spiritual power were, as a power, as a public power, abolished, [then] the greatest cause for human peace would have been abolished, which of course was based on a very narrow understanding of man. But at any rate, the Hobbean doctrine clearly implies this. So now the fear of violent death, the natural pillar of the whole thing, needs for its support Hobbes's *Leviathan*. Just as in another way the economic strivings, the natural economic striving for profit, however you call it, need for their support Adam Smith, because without Adam Smith or his equivalent, say, Milton Friedman or whatever may be the way, the governments would make mistakes all the time. [20]That's the same relation. Now you wanted to say something.

Student: You are saying that this injunction to seek peace . . . the right to self-preservation.

LS: No, no, it is derivative. It is derivative. If you cannot have peace, [then] fight. I mean, the primary, the order is very simple. The right to self-preservation, which includes the right to do anything you see fit to other people or against them in order to preserve yourself. But this is not a good solution, for obvious reasons; therefore, peace. And peace becomes then *the* demand, if you can have it. But if you have it, you must do everything in your power to keep it, and that means you must be an absolutely obedient subject, the sovereign's primary purpose being to preserve the peace. And then of course you must, in order to be peaceable in the proper manner, you must also develop habits of peace. I mean, for example, if a fellow is irascible, he must fight his irascibility; otherwise he will be a danger to peace all the time. And so on. Therefore—but these virtues, kindness or whatever it may be, are secondary, compared with peace; and therefore there is a perfect order of preferences. There is no contradiction here. Self-preservation, if endangered, overrides all duties. Peace, if endangered, overrides all moral obligations in specific ways. And so on. And therefore the . . . of the subjects regarding the sovereign are ordinarily a conflict between subjection which is the end of peace, and immorality, injustice of the government. And then there is a clear order of preference. Peace comes before peaceableness. Subjection has the right of way compared with tyrannical action of the government. This is where Hobbes is quite clear. The difficulty, I think, the clear difficulty which he did not solve in any way, concerns the fact that he both admits and denies that it is possible to distinguish between the king and tyrant.

This is, I mean, a clear limit of his whole teaching, and therefore Locke and Rousseau tried to take care of that.

Student: It seems also from what you said that the Christians' faith might require a believer to give up his life of self-preservation and to suffer martyrdom with a view to the . . . Bible.

LS: Ya, very good. Hobbes does this, and Hobbes says then you do not argue on the basis of self-preservation, you argue on the basis of the Bible, and then let us read the Bible. Let us read the Bible. And Hobbes knew the Bible quite well. And he says that in the first place you must be subject to the powers. But of course you must also obey God rather than men. What does this mean? What does God demand from the Christian? And then he says—I mean, that's one way of arguing—*the* duty is charity. But what does charity mean? In the first place, peacefulness. And you are uncharitable if you start a revolution. That is one way in which he does it. And regarding the faith, the dogmas to believe, he says there is only one dogma which has a New Testament backing, and that is [that] Jesus is the messiah. And [21]every Christian admits that as a matter of course. Then no Christian can resist the government, a Christian prince, because as a Christian he of course admits it. The difficulty arises only if he is an infidel, as we have seen. And there he says: I told you, therein they must also obey. Which means in plain English they must *conceal* their Christian faith for Christian reasons, except the bishops. [Laughter] That was his nasty way out of—ya?

Student: Who decides whether the sovereign is an effective sovereign if the sovereign is in some situations unable to protect the minority or part of his subjects?

LS: Oh, the minority. That does not . . . that is not a—we think ordinarily here of a monarchy. A danger that the majority might oppress the minority cannot exist because what could—

Student: How does he . . .

LS: Well, generally Hobbes takes a very strict moralistic line in order to be on the safe side: Be loyal to the sovereign until he is chased out of his dominions and the conqueror takes over, and then you can in good conscience obey the conqueror. Ya? Which is not bad, as this question—because otherwise it would be disloyalty, of course. Treachery. Yes?

Student: One thing I don't understand. Rousseau, when speaking of Hobbes, tries to link him to Caligula, saying that Hobbes, like Caligula, would say that men are by nature a herd of animals who should have a shepherd to lead. On the basis of the remarks put forth this afternoon, I do not see how this can really be applied to Hobbes.

LS: Well, the remarks of Rousseau on Hobbes are not always on the highest level. I mean, they are partly simply the arguments of a simple republican against an adherent of absolute monarchy. There are also other statements of Rousseau in which he speaks of Hobbes in a very different way. Ya?

Student: It could not really be denied, it could not be attributed to him that he did not know Hobbes.

LS: No, surely he knew him, but he sometimes spoke about him in a loose—a manner which is not quite—to some extent he of course is right. Hobbes, when confronted with cases like Nero, can only say [that] Nero is dangerous only to people who live at his court. But that is a tiny group of people and the foolish men, the wise men would not go to his court under any circumstances. If Seneca did, an allegedly wise man, that was his own folly and he was punished for it. But the millions of subjects of Nero were not hurt by Nero. That is what Hobbes says, and this is not a very good answer. And what Rousseau means with his criticism is, I think, fundamentally this, that there is no guarantee—no, one can say it even better, in a better way. I should have said that. This right of the subject: whoever is threatened in his life, and not by suspicion merely but actually assaulted, may kill, and it is perfect justice. This is of course not a good guarantee. I mean, because now let it not be a justly condemned murderer; let it be an honest man who has been condemned to death through a bribed judge, bribed by—overawed by the king. That is not good enough protection for him, that he may, using his bodily force, try to get out of the jail and emigrate to another country. This is the *real* difficulty, I mean the political difficulty, of Hobbes, and this led to the corrections by Locke and Rousseau, who simply said: You must have a much better *guarantee* for the self-preservation of each than Hobbes supplies, and that can only be if the government is limited. That, one can say, is Locke's solution. Or if the government remains in the hands of all: that is Rousseau's solution. And one can say[22], I believe, that their argument is, on the Hobbean basis, absolutely sound. If self-preservation is *the* root of civil society, the total surrender of everyone's power to the sovereign, who could be a monarch, is absurd. I mean it had this attraction to Hobbes in these times of religious wars, where he felt the only thing necessary is to have a very strong central power which can keep the peace among these warring sects. That is of course the simple explanation of why it was so evident to Hobbes, and there were other considerations of that kind. But as a doctrine generally stated, and disregarding the situation in which Hobbes wrote, it is an impossible doctrine. If self-preservation is *the* end, one has naturally to protect each not only against the others but also against the government, which might become bloodthirsty, you know, and Hobbes has not provided for that. And Rousseau and Locke provided for it in principle. The difficulties which they have are of a different order, but it is all the more important to realize that both Locke and Rousseau *start* from the Hobbean premise, and their theoretical effectiveness is due to the fact that they accept Hobbes's premise and say *precisely,* if this is the starting premise, different conclusions follow. Ya?

Student: . . . The comparison of Hobbes to Caligula is . . . people are like sheep with the sovereign being the shepherd. Then immediately the next question would be, What is the function of the sheep to a shepherd?

LS: [23]This is an old comparison of kings to shepherds from olden times.

Same Student: No, but I mean, why does a man have a bunch of sheep? Not for the good of the sheep, it's for the—

LS: Sure, this is true, if you can criticize this simile, which is of course meant to be limited, then you can say, sure, one should not understand kings as shepherds because shepherds will kill the

sheep or at least shear them sooner or later. But a refutation of a simile is not a very serious matter. Mr. Erickson? Oh, I'm sorry.

Student: . . . problem of the vicious monarch . . . self-preservations . . .

LS: Who?

Student: Say, you know, Stalin . . . all the aristocrats lay down their arms . . . even Hitler.

LS: Well, you know what happened to the peasants in Ukraine. Two millions, he said when he was drunk, to Churchill; Churchill asking as one old hand to another: How many? And he said: About two million. That many. Well, still the point is not as simple. For example, in the famous blood purge which Hitler made in—when was it in Munich? In '34?[xxiii] When he tried to get rid of his opposition, Strasser,[xxiv] I think it was, in Munich, there were many people killed who had nothing to do with his opponents. Partly—I know this from someone who was there in Munich at the time—these fellows simply looked up the directory, telephone book, and if the man was called, say, Muller, or Hans Muller, and if there were five Hans Mullers they did not particularly investigate which Hans Muller, and they went to the first and killed him. I know of one—

Student: . . . procedural . . .

LS: No, in other words, it is really—no. There must be—no.

Same Student: . . . in ordinary criminal reports, sometimes, the man is not in the vicinity. I mean . . .

LS: Ya, but this is . . . this is certainly a grave question. I mean that—

Same Student: . . . is ultimately theoretically decisive for the destruction of . . .

LS: Because not merely to life; it applies also to other things.

Same Student: . . .

LS: No, but if an absolutely stupid fellow, or a stupid bunch of fellows, is *the* absolute, is *the* judge of what can be said and not said, at universities or in any other places, imagine that. You would not like it. And I believe you believe you would not like even if you could be sure that you had him in the pocket, i.e., that he would only permit what you like and forbid what you dislike.

Same Student: I'd . . . [Laughter]

LS: Pardon?

[xxiii] "The Night of the Long Knives," June 30-July 2, 1934.
[xxiv] Georg Strasser, a Nazi Party official murdered during the Night of Long Knives.

Same Student: . . . as long as he does what I tell him and . . .

LS: You see, but you must admit that this is almost as impracticable as to have a lion cub at home and to trust that he would always remain a sweet lion cub, even if he has grown up. I would not advise that. Mr. . . .

Student: Yes, you know in Machiavelli, the notion of a founder: I'm wondering how this doctrine carries through to Hobbes. Does he . . . it? It seems to me that . . . identifies . . . with the sovereign.

LS: No, no—but excuse me. The founder in the highest sense in which Machiavelli understands it is of course Hobbes. No one else. And Hobbes writes his book in the hope that an enlightened English government will adopt it as a textbook for Oxford and Cambridge, and then he can be sure that all future generations of Englishmen will bless themselves in the name of Hobbes, the man who brought *the* truth to England. And if the English example is impressive, also other countries.

Same Student: But I am still confused, because Machiavelli was meant to be the teacher of evil.

LS: Ya, but that is Hobbes. All right. Let us say, if Cromwell, or perhaps Ireton, had seen the light—Ireton[xxv] might have seen it; you know he was Cromwell's son-in-law—[24]then it would have happened. Then Hobbes would have been the teacher. There is no difficulty. I mean, after all, Machiavelli too cannot guarantee that he will find any takers. He did find them in unexpected places, but Hobbes [did] too. The influence of Hobbes is quite considerable, but always after some mitigations were made. But Pufendorf, for example, became one of the acceptable teachers. Hobbes's influence was denied by most people who underwent his influence because it meant signing one's own death warrant, as it were, to say that one has learned something from Hobbes.

Student: . . .

LS: No, I don't think so. No. Next time we will take up Locke and Rousseau.

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[1] Deleted "that."
[2] Deleted "so."
[3] Deleted "one way."
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[6] Deleted "and the unjust."
[7] Deleted "in order to—."
[8] Deleted "solid."
[9] Deleted "it in."
[10] Deleted "this is how Hobbes understands."
[11] Deleted "the contract of."

[xxv] Henry Ireton (1611-1652), a soldier and a leading figure in the Parlimentary army. He negotiated with King Charles to establish a constitutional monarchy, but when Charles fled to the Isle of Wight, Ireton became convinced that negotiations were impossible. He was one of the organizers of the King's trial and one of the signers of the death warrant.

[12] Deleted “can.”
[13] Deleted “consist.”
[14] Deleted “I mean.”
[15] Deleted “no mean.”
[16] Deleted “both.”
[17] Deleted “are very.”
[18] Deleted “Hobbes’s political.”
[19] Deleted “sake.”
[20] Deleted “this is.”
[21] Deleted “this is.”
[22] Deleted “that.”
[23] Deleted “well this is an old I mean.”
[24] Deleted “he might have seen it.”

Session 15: November 26, 1962

Leo Strauss: [In progress] —words, idealism. Now when you take, say, Plato and Aristotle, you find a description of the best polity, and this best polity is not assumed to be or have been *actual* at any time, whereas in Cicero it is understood that the best polity is or was the Roman polity. So here there is a coincidence of, in modern terms, the ideal with the real in Rome. Now when we come to Hobbes, we see a radical change in orientation, and the best order or the fair or good order is to be realistic, to use again these questionable terms, meaning in agreement with the passions. But this does not mean that the scheme as developed by Hobbes and his successors is necessarily actual. It is as much ideal as Plato's perfect polity is an ideal, and we have Hobbes's own testimony to confirm this. Hobbes says somewhere in the *Leviathan* that he feels that his *Leviathan* might be regarded as of the same character as Plato's *Republic*, namely, something *very* unlikely ever to be achieved.[i] There is no—I think the difficulty is intelligible. Even if you develop an idea rather close to what one could expect from ordinary men, it may still be unlikely to be achieved. But this gives—I remember now you were the one who asked me this question.

Did I make it clear now? In other words, if this is the sphere of the actual, and you have here the Platonic . . . Hobbes is very close to it. Yet formally the difference between the actual and the ideal remains. This is very deceptive because when one comes, say, first to seventeenth-eighteenth century literature, one has the impression that here *idealists* are at work—you know, that there is no fundamental difference, say, between Plato and some precursor of the French Revolution. But this is very deceptive, because these so-called idealists of the eighteenth century did not start from the Platonic notion of the order, the hierarchic notion of the soul, but they started from that lowly thing called self-preservation alone.

Now did I succeed in making this point clear? I know that when I was very young it took me some time until I understood that, understood this difference, because at first glance, compared with political thought as it developed later in the nineteenth and twentieth century, the eighteenth century political thought and that of, say, Plato and Aristotle seem to be fundamentally of the same character. But that is a great error. It's a new—I mean, in both cases you have loosely spoken idealists, but the ideals are of a very different nature and origin in modern times from those in classical ones. Mr. Butterworth?

Mr. Butterworth: I think I see your distinction between the lowest part, the real, in both eighteenth century and in Plato and Aristotle, but I do not see that divergence in the ideal. If you take these two terms and you put them—

LS: Ya, in the loose sense . . . What do you not see?

Mr. Butterworth: I don't see the divergency. I think you are trying to put one against the other which I—

[i] "I am at the point of believing this my labour, as uselesse, as the Common-wealth of *Plato*," *Leviathan*, chapter 31.

LS: Ya, but [as] I stated before, let us take the clear Thomistic schema, the three natural inclinations—roughly, not quite correctly: self-preservation, sociality, and knowledge—three—with the understanding that this is higher, delete that, keep only the lowest, self-preservation. And now this is of course allegedly absolutely belonging to the sphere of the actual. All men are *actually* concerned with their self-preservation, whereas very few men are concerned with virtue and knowledge, so it is realistic. But this self-preservation as Hobbes understands it leads to certain demands, the demands which he calls, again, natural law, peace, and the other social virtues. But these demands are as much demands as the highest demands of traditional philosophy and theology, and it is perhaps less difficult to be honest on that pedestrian level than to be virtuous on the highest level. That is not quite as difficult, but still also the problem remains. The difference between ideal and real, between the ought and the is, remains, of course. For example, [1]on the Hobbean basis, if you are a sensible man and of course concerned with your self-preservation, you are supposed to be a decent chap. But not every man is a decent chap, and this shows that there is a difference between the demand and what you get, between the ought and the is, in Hobbes as well as in Plato.

So in other words, the Hobbean teaching is formally as normative as Plato's teaching. Take the doctrine of sovereignty. The doctrine of sovereignty is not meant to tell you what is the case in any state but what *ought* to be in every state. Hobbes knew that there was not in a single state he knew of sovereignty in the sense in which he understood it. Not even in Turkey, because in Turkey there [it] was still understood that there is a law, the law of Islam of course, which is not dependent on the Sultan. And there is in Hobbes's interpretation [the view] that the law of Mohammed had any validity whatever in the Turkish empire only because the sovereign, i.e., the sultan, chose to approve of it. Ya? So in other words, sovereignty in the Hobbean sense is as much a norm as Plato's philosopher-kings, there can be no doubt about that. The same is of course also true of Locke and Rousseau, to whom I will turn later.

Now I wanted to make one additional remark regarding Hobbes, and that is, I have said, as it has frequently been said, that what Hobbes is is a theorist of enlightened despotism, of that peculiarity of the seventeenth-eighteenth centuries. Famous representatives: Catherine the Great of Russia, and Frederick the Great of Prussia, and Joseph II of Austria. That is true, but we must here observe an important distinction. The despotism, meaning the absolute monarchy, this is guaranteed through the Hobbean scheme, within the Hobbean scheme. But that the despot will be enlightened, there is no guarantee. In other words, the sovereign must have all these rights which Hobbes enumerated, otherwise the whole thing breaks down. But if the sovereign chooses to be unenlightened, there is no possibility of bringing this about. His enlightenment is not more than a pious wish. Needless to say that the same difficulty arises on the basis of democracy and the democratic concept of sovereignty. The sovereignty of the people can somehow be guaranteed, but that the people will act *wisely* is of course a mere wish and cannot be guaranteed by any institutional arrangements.

I would like now to turn to Hobbes's most successful and influential successor. That is Locke. Hobbes had other successors, too: Spinoza, Pufendorf, and many others. But there is a great difference between these successors and Locke, and this has very much to do with the difference between the Continent and England. The Continentals are, from a British point of view—and that is not only from a British point of view—more [2][fickle] than the English. Now the first reaction

to Hobbes was [from] an English writer, Richard Cumberland, who wrote a very long book on natural law,[ii] which is fundamentally a restatement of the older view. But in its formal character, in its attempt to be demonstrative, it is surely influenced by his great opponent Hobbes. But Cumberland is completely forgotten in comparison with John Locke. Now John Locke wrote his famous political work, the *Two Treatises of Government*, which are meant to justify the revolution of 1688, the Whig Settlement; and this Whig Settlement became then also the model for the American settlement one hundred years later. And in early America Locke was, as I have read in all the books dealing with that, still *the* authority; and one does not even have to be very learned in early American history to know that, it suffices to read the Declaration of Independence, where the influence of Locke is very . . . writ large. Even the formulations stem partly, literally from Locke's *Second Treatise of Government*.

A word might be said about the difference between the Declaration of Independence and Locke, because the positive relation is obvious. The key rights mentioned at the beginning of the Declaration are the right to life, liberty, and the pursuit of happiness. This is not a Lockean formula. Locke's formula is rather life, liberty, and *property*. And the interesting thing is, why did Jefferson drop property and replace it by pursuit of happiness? Now one can know from his other utterances, letters and so on, that he did not regard property as an object of the *natural* right: property always presupposes already civil society, and therefore is not a natural right proper, a natural right proper being one which is independent of any governmental action, which exists in the state of nature.

As far as I know, the pursuit of happiness as an explicit them became central in the work of a German writer on natural law, a very famous man, Christian Wolff, who wrote a terrific work, six volumes, if I remember, *Jus Naturae*, Right of Nature,[iii] and in his work this plays . . . is a key concern. Some French-American, Mr. Chinard, formerly at Princeton, believed that the pursuit of happiness is a specifically American idea. Comparing the Declaration of Independence with some French revolutionary documents, he found that these French documents do not say anything about pursuit of happiness, and then he inferred that this is American. And he explained it: you know, the frontierspeople, new frontierspeople, [were] full of hope and not sophisticated, whereas the old sophisticated French nation knows of course that happiness cannot reasonably be expected from such [a "vale of tears and affliction"].[iv] Now it is therefore all the more amusing that you find it, the pursuit of happiness principle, very clearly stated in the early eighteenth century in the midst of Germany, which was surely not frontier; and to interpret what it means I give you two examples. According to Christian Wolff, it is *against* natural law—there is no natural law basis for anyone attempting to vindicate the honor of God against blasphemers and so on. No natural right for that. On the other hand, there exists a natural right to adorn one's body, a natural right to cosmetics. I think that is almost a definition of the rococo. So rather the

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[ii] Richard Cumberland, *A philosophical inquiry into the laws of nature: wherein the essence, the principal heads, the order, the publication, and the obligation of these laws are deduced from the nature of things* . . . [*De legibus naturae, disquisito philosophica* . . . 1672], trans. Rev. John Towers (Dublin: S. Powell, 1750).

[iii] Christian Freiherr von Wolff, *Jus naturae methodo scientifica pertractatum* (8 vols.) (Frankfurt, 1740-1748).

[iv] Gilbert Chinard, *Thomas Jefferson: The Apostle of Americanism* (Ann Arbor: University of Michigan Press, 1957), 90ff.

rococo than the frontier is the basis of the pursuit of happiness, we can say. But more seriously, I believe that—I cannot prove it—the difficulty is created by the fact that the formula occurs already in the Virginia Declaration made by James Mason, whom I have never studied. But Jefferson, I believe, was guided in his choice of pursuit of happiness also by his concern with religious liberty; and I believe one must understand pursuit of happiness to mean every kind of happiness, happiness of this world as well as of the next, which would then include the freedom of religion. But this only in passing.

Now let me turn then to Locke. We are confronted with the great difficulty of placing him, as it were. *The* authority for Locke is Hooker, Richard Hooker, whom he regularly calls "judicious Hooker." This epithet, by the way, was applied to Hooker long before Locke, but he continues that. Now Hooker is clearly a follower of Thomas Aquinas, and the differences we do not go into because it does not matter. So we are led from John Locke in the first place to Thomas Aquinas, and then naturally to the Church Fathers, and eventually to the Stoics and to Socrates. So in other words, Locke is a great representative of the "genteel tradition," as someone has called it,[v] and he is as such the clear opponent of that wild beast from Malmesbury, as they called him, namely, Thomas Hobbes. The fact that he never mentions Hobbes anywhere in the *Treatises* is of course additional evidence, and in one of his polemic writings, he says, "I am not well-read in these justly decried authors," meaning Hobbes and Spinoza. So he is really perfectly innocent of any bad thing. Now therefore we have to believe that and not indulge our imagination.

There is only one point where Locke indicates a difference from Hooker, a single passage. And that is paragraph 15 of the *Second Treatise*: "To those that say that there were never any men in the state of nature, I will not only oppose the authority of the judicious Hooker (*Ecclesiastical Polity*, book 1, section 10) where he says . . . [gives a quotation—LS]. But I moreover affirm that all men are naturally in that state [state of nature—LS], and remain so, till by their own consents they make themselves members of some politic society," and so on.[vi] In other words, Hooker had said *some* men are in the state of nature and Locke says all men are *naturally* in the state of nature. A minor difference, but the difference appears to be great immediately in its true light when we read the passage quoted by Locke from Hooker and read the whole context, read the whole first book of Hooker, and see that there is not a *single* mention of the state of nature in Hooker. Now again this is one of these little scholarly things. People say: Well, there is really no great difference; there is a social contract in Hooker and there is a social contract in Locke, and many more things which they have in common. Undoubtedly. But this point—that there is no state of nature in Hooker and there is a state of nature in Locke—is clearly a point which has to be considered.

Now there is another point which he mentions where Locke does not explicitly say that he deviates from Hooker, but he indicates it by speaking of a doctrine of his as a *strange* doctrine. "Strange" means here of course also novel. And what is this strange doctrine? That in the state of nature everyone has executive power of the law of nature. You will also not find that in Hooker. Now what does all this mean? Surely that there is not a hundred-percent agreement between Locke and Hooker. About ten years ago, an English scholar edited the only work of Locke which

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[v] George Santayana, "The Genteel Tradition in American Philosophy," An Address delivered before the Philosophy Union of the University of California, August 25, 1911.
[vi] Locke, *Second Treatise*, sec. 15. Ellipses indicate that Strauss left out a portion of the passage.

is explicitly devoted to the law of nature, because the *Treatises of Civil Government* are of course not thematically devoted to the law of nature; they only appeal to it, they refer to it. Now in these essays—the editor is von Leyden and it was brought out by the Oxford University Press, I believe in 1947 or so, no, later, later, fifties, somewhere in the fifties. This is extremely interesting.[vii] It is a much earlier writing of Locke and at first glance looks very different from the *Civil Government*, but there are a few things which are very revealing. Locke denies in the *Essays on the Law of Nature*, as they were called by the editor, that the law of nature is inscribed in the minds of men, which was the assumption of the tradition. But he affirms that reason can attain to the knowledge of natural law. In other words, knowledge of natural law is due entirely and exclusively to the effort of reason. There is no primary awareness, no *synderesis* there. He also denies that the law of nature can be known from men's *consent*, you know, from universal consent of the human race, which was also an element of the traditional view. And finally and above all, he denies that the law of nature can be known from men's natural inclinations. Locke denies all the principles of traditional natural law. He does this in a context and in a language which can easily deceive one, but if one is aware of what the issues are, one sees that in all these points, Locke *disagrees* with the old tradition and agrees with [3][Hobbes], who is also never mentioned there.

And the argument regarding natural inclinations is the same which he advances later on in his *Essay concerning Human Understanding*. This argument is surely most appealing to most of you. In order to find out what men's natural inclinations are, we just have to look at men—look at men—and then we see that the inclinations of most men are absolutely amoral and immoral and have nothing to do with any morality as the tradition had assumed. And that settles it. The conclusion from this is, and this is entirely confirmed by the *Treatise of Government*: There is no knowledge of natural law independently of philosophy or science. So there is, if I may say so, no natural knowledge of natural law. To use a phrase occurring in the *Two Treatises*, the natural law is known to the *studiers* of natural law, that is to say the philosophers and scientists, and not to dairymaids, and spinsters, and day-laborers, and so on and so on. They know nothing of that. The conclusion, if we just use our heads for a moment without looking up the text, is this: If the law of natural law is not known naturally and can become known only through the effort of philosophy and science, then the natural law is not sufficiently promulgated. Almost all men know nothing of the natural law. They have no natural inclinations and no *synderesis*. And if the natural law is not by nature sufficiently promulgated, it is of course . . . cannot be obligatory for practically all men. This conclusion is of course not explicitly drawn. And when you read Locke, especially the *Second Treatise of Government*, his most famous political work, you see that on the whole this looks all very Hookerish, very old-fashioned. But there are also strange things utterly incompatible with Hooker, and the best one could say [is] that Locke's teaching appears to be an unclear in-between position, between Hooker and Hobbes. And this I believe is the predominant view; and naturally this is an excellent recommendation, because for great popular success, as Locke had infinitely more than Hobbes, such unclear positions—eating the cake and having it—are highly to be recommended.

[vii] *Essays on the Laws of Nature, the Latin text with a translation, introduction, and notes, together with transcripts of Locke's shorthand in his journal for 1676*, ed. W. von Leyden (Oxford: Clarendon Press, 1954). See Strauss's review essay in *What is Political Philosophy?*, chapter 8.

But how can we go to reach a better understanding? I read to you a passage from the *Essay concerning Human Understanding*, a section entitled "Morality capable of demonstration." This is the famous idea of ethics geometrically demonstrated, in Locke's version.

"The *idea* of a supreme being, infinite in power, goodness, and wisdom, whose workmanship we are, and on whom we depend; and the *idea* of ourselves, as understanding, rational beings, being such as are clear in us, would, I suppose, if duly considered, and pursued, afford such foundations of our duty and rules of action, as *might* place *morality amongst the sciences capable of demonstration* [in other words, a strictly theological doctrine—LS]: wherein I doubt not, but from self-evident propositions, by necessary consequences, as incontestable as those in mathematics, the measures of right and wrong might be made out, to any one that will apply himself with the same indifferency and attention to the one, as he does to the other of these sciences. The *relation* of other *modes* may certainly be perceived, as well as those of number and extension [the mathematical subjects—LS]: and I cannot see, why they should not also be capable of demonstration, if due methods were thought on to examine, or pursue their agreement or disagreement [when ideas *agree* with one another, then the conclusion is legitimate; when they disagree, it is an absurdity—LS]. *Where there is no property, there is no injustice*, is a proposition as certain as any demonstration in *Euclid*: for the *idea* of *property* being a right to anything; and the *idea* to which the name *injustice* is given, being the invasion or violation of that right; it is evident, that these *ideas* being thus established, and these names annexed to them, I can as certainly know this proposition to be true, as that a triangle has three angles equal to two right ones [so this was the proposition: "where there is no property, there is no injustice"—LS]. Again: *no government allows absolute liberty*: the *idea* of government being the establishment of society upon certain rules or laws, which require conformity to them; and the *idea* of absolute liberty being for any one to do whatever he pleases; I am as capable of being certain of the truth of this proposition, as of any in the mathematics."[viii]

Now when you read this you see that Locke speaks in fact of two kinds of natural law teaching, the one which is theological, the other is nontheological, where only the relations between property and justice, and government and liberty, are considered. And in the first case, he has certain qualifying points: "I suppose"; "might," the term which I emphasized in reading it to you. This is one indication which will, may lead us further. In both cases, of course the doctrine is geometrical, mathematical; but we have in the first half these qualifiers, and in the second cases there are none.

Now to come back to the overall impression the reader has today of Locke and probably also in earlier times is that, as a contemporary writer puts it, [4]the treatise is full of logical flaws and inconsistencies.[ix] Now the basic contradiction is this. Locke begins to describe—at the beginning describes the state of nature; and at the beginning, the state of nature looks to be good, peaceable, the Golden Age—the term occurs—and a social state, i.e, a state where men live together *under natural law*. And of course that means they all *know* the natural law, otherwise they could not be subject to it. But when you go on, you see that Locke demolishes this picture, and at the end of his argument the state of nature proves to be bad: a state of war, presocial, and not under law.

[viii] John Locke, *An Essay Concerning Human Understanding*, 4.3.18. Italics in original.
[ix] Strauss may be referring to C. B. Macpherson. See *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962).

This is a manifest contradiction. The basis of this difficulty appears perhaps most clearly from the *Essay concerning Human Understanding*, a passage which I must read to you. There is a section on laws there,[5] where he makes the distinction between the divine law, the civil law, and the law of opinion or reputation. And the only one of these three which could possibly be the natural law is the divine law. Now, what does he say about the divine law?

"The divine law, whereby I mean that law which God has set to the actions of men, whether promulgated to them by the light of nature, or the voice of revelation [in other words, the divine law is also the law of nature—LS]. That God has given a rule whereby men should govern themselves, I think there is nobody so brutish as to deny. He has a right to do it; we are his creatures: he has goodness and wisdom to direct our actions to that which is best: and he has power to enforce it by rewards and punishments of *infinite* weight and duration in another life; for nobody can take us out of his hands. This is the only *true* touchstone of moral rectitude; and, by comparing them to this law, it is that men judge of the most considerable moral good or evil of their actions; that is, whether, as duties or sins, they are like to procure them happiness or misery from the hands of the Almighty."[x]

Now the natural law or the divine law as here defined presupposes punishments and rewards after life, of infinite duration, which is almost the same as eternal. Now Locke makes clear elsewhere that natural law cannot have knowledge of a life after death, i.e., the sanctions for natural law are not knowable to unassisted reason, to reason proper. But a law which has no sanctions is according to Locke not a law proper. The consequence, which Locke does not draw but which we must draw, is that the so-called natural law is not truly a law. I must read to you a few passages from the *Second Treatise*: "the law of nature would, as all other laws that concern men in this world, be in vain, if there were nobody that in the state of nature had a power to execute that law."[xi] This is the reason for Locke's strange doctrine that in the state of nature everyone has executive power of the law of nature. The executive power of the law of nature is not in God, because God's punishments or rewards will be after death and this we cannot know. Nor can it be said to be the conscience; it can only be in the hands of other human beings. *This* is the basis of Locke's strange doctrine that in the state of nature everyone has the executive power of the [law][xii] of nature.

One can state here the principle which applies equally to the modern thinkers. If the traditional view can roughly can be described as follows, that if you take men's actions and desires unqualified, if they are not filtered as it were in any way, then according to the traditional view there must come a limitation to them from above, from God, from reason, a vertical limitation. The general thought underlying this modern revolt was this: that these vertical limitations are not reliable, they are not certain; that if we wish to limit the human desires, as they surely *must* be limited, the only limitation which can be effective is *horizontal*. That is, the limitation must come from other human beings. A mutual limitation of desires, strictly intrahuman, is the only practicable solution. This was the principle of all these men, and the formula, the very general formula for that is that in the state of nature everyone must be the executor of the law of nature.

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[x] *Essay*, 2.28.8.
[xi] *Second* Treatise, section 7.
[xii] Strauss says "state" here but presumably means "law."

It becomes then necessary for a variety of reasons which I cannot sketch now to look for the true basis of Locke's natural law doctrine. This cannot be found in the traditional doctrine as in Hooker and others but must be in a radically different way. I read to you a few passages from the [ninth chapter of] the *First Treatise* first.

"God having made man, and planted in him, as in all other animals, a strong desire of self-preservation, and furnished the world with things fit for food and raiment and other necessaries of life, subservient to his design that man should live and abide for some time upon the face of the earth, and not that so curious and wonderful a piece of workmanship by its own negligence, or want of necessaries, should perish again, presently, after a few moments continuance; God, I say, having made man and the world thus, spoke to him, (that is) directed him by his senses and reason, as he did the inferior animals by their sense and instinct . . . which were serviceable for his subsistence, and given him as means of his preservation."[xiii]

And so on. God gave man this right to use these beasts and the herbs. Somewhat later Locke writes:

"The first and strongest desire God planted in men, and wrought into the very principles of their nature, being that of self-preservation, that is the foundation of a right to the creatures for the particular support and use of each individual person himself. But next to this, God planted in men a strong desire also of propagating their kind, and continuing themselves in their posterity" [but this is later and less strong than the desire for self-preservation—LS]—[xiv]

This, it seems to me, is the starting point of Locke's argument, the Hobbean starting point. Now how does he go from here? We can discern this very easily. If one has then natural right to self-preservation, one has of course the right to the means to self-preservation; and then everyone is by nature the judge of what means are conducive to his self-preservation. This leads to further consequences, some of which I will indicate here. This I mention here for reasons which we will see immediately, but [it] is already in the more advanced part of the argument. Very briefly, the situation is this. Men must, in order to preserve themselves, establish a supreme power which will protect them. And how to establish this? There must be a social contract, and the delegation of the legislative power—of the supreme power, as Locke calls it—must be made to a man, or few, or all, whatever they choose, by the majority vote, as the majority of this society-founding assembly. Now what is the basis of the majority right?

"For when any number of men have, by the consent of every individual, made a community [the consent of every individual—LS], they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. For that which acts any community being only the consent of the individuals of it, and it being necessary to that which is one body to move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority; or else it is impossible it should act or continue one body, one community . . . And therefore we see that in assemblies empowered to act by positive laws where no number is set by that positive law which empowers

[xiii] *First Treatise,* sec. 86. Ellipses indicate that Strauss omitted a portion of the passage.
[xiv] *First Treatise*, sec. 88.

them, the act of the majority passes for the act of the whole, and of course determines, as having by the law of nature and reason the power of the whole."[xv]

The majority rule is a law of nature and reason. And why is it a law of nature and reason, according to Locke? Because by nature the majority has [6]greater *power* than the minority. By nature. I mean in other words, if you disregard artificial strengthenings of the [7][minority] by atom bombs and other artificial means, [8]by nature the physical power of one man is as great as any other on the average according to the Lockean . . . everyone can kill everybody else as we have seen. This is the [power of] ballots. The ballots are substitute for the bullets, as has often been said. And the bullets are substitute for sheer exertion of body direct, unsupported bodily force by the various antagonists. In brief, I contend—I cannot give sufficient proof in this brief course—that the *basis* of Locke, the starting point of Locke, is identical with that of Hobbes, and the great power of Locke consists in the fact that on the very Hobbean basis he refutes Hobbes's conclusions. In other words, he proves that precisely if you take this low ground of self-preservation alone, you arrive at limited government and the protection of liberty and so on. The right of self-preservation favors limited government in contradistinction to absolute government. There is only one contract of everyone with everybody else, just as in Hobbes, and this contract establishes *society* as the supreme power. So [9]in other words, the social contract is a contract of subjection, but you subject yourself not to the derivative power of the government but to the power of society, and, well, the details of Locke's political recommendations, representative government, are known to you and are of no interest to us now.

One implication of the Lockean doctrine in contradistinction to the Hobbean is particularly important and it is frequently overlooked, and that is this. Everyone knows of the right of revolution in Locke, the right of resistance to a tyrannical government in Locke. The *people* may rise. Locke never speaks of the individual. The situation which Locke has in mind is a situation in which either a monarchic or oligarchic government oppresses the people. He does not consider the case of the oppressed individual. And this we know was Hobbes's specialty, in this beautiful case of the condemned murdered who has the right to kill the guards and to get away.[xvi] Resistance of the people is strongly emphasized by Locke and wholly absent from Hobbes. But on the other hand, Locke abandons for all practical purposes the right of resistance on the part of the individual, and one can of course say Locke was quite right from a prudential point of view. The isolated individual does not have a ghost of a chance if confronted with the power not only of the government but also of society, whereas if the majority of the society is displeased with any governmental actions or measures or arrangements, it is fairly easy for them, at least relatively easy for them, to change this state of affairs.

The greatest change, however, which Locke effected in the Hobbean scheme concerns a direct consequence of the right of everyone to his self-preservation, and this is the right to property. According to Hobbes there is no natural right to property, property being absolutely an institution of society already established. There cannot be a natural right to property. In the state of nature everyone can take away anything from anybody. Locke teaches that property antedates civil society. So men enter society not only to protect mere life, but especially in order to protect their property. This leads to the very grave implication which I can only mention, which has

[xv] *Second Treatise*, sec. 96. The ellipses indicate that Strauss omitted a portion of the passage.
[xvi] *Leviathan*, chapter 21.

shaken the world: no taxation without representation. Because of the natural character of property, government cannot take away a cent from you if you do not agree with that through yourself or through your representatives. Therefore, no taxation without representation.

Now what is the strict theoretical reasoning? If I have the right to preserve myself, I have of course the right to the means of my self-preservation. Now but what are the most obvious means of self-preservation? And here as it were he asks Hobbes to be a bit more practical than he was, because Hobbes seemed to think entirely of stones and sticks with which to hit the other fellow over the head, but Locke thought rather of the turnips, or even more precisely of the acorns. In other words, the primary means of self-preservation is food, a subject about which Hobbes had been relatively silent. Now we look at how food preserves ourselves, we make this observation, which I am sure you all have made before: that food will not be conducive to your self-preservation if you do not eat it. [Laughter] But what does eating mean? Eating means to make it your own in such a way that it becomes your absolute property. Once it has gone over, the food has gone beyond your tongue, it is absolutely your own. Here we see that man has by nature a right to *absolute* appropriation; I mean, appropriation so that he has no duties toward anybody else here. He is the absolute master of this property; otherwise, he cannot live. Good. But Locke goes into great details about this very interesting right of property, which as you know has become the greatest theme of modern times. And the famous teachings of Adam Smith as well as those of his latter-day opponents [are][10] in germ in Locke.

Now therefore we have to watch this argument a bit. According to Locke every man has a right to what he needs for his self-preservation: so and so many turnips or whatever it may be; also reasonable variety, we may assume, if it is available in the state of nature. But he has no right to appropriate everything, of course.[xvii] No right, that would be an unjust act. What are these limitations? In the first place, what gives you title to property? It is not sufficient that you *need* it. That is not yet sufficient, because the other fellow may also need that turnip or that apple. What gives *you* the right to *this* apple you are now about to eat? [11]To which Locke says—well, what? Force and fraud can as such be no right, no just titles. But you have taken the trouble of picking it up, picking it. That you may have picked it up, still some kind of effort on your part is implied. In brief, the title to property is labor. And the strict construction is this: you have [your body]; your body belongs to you by nature. The apple belongs to no one. But if you mix your labor, the labor of your body, the sweat of your body, with that propertyless thing, it becomes your property because no one else's sweat, labor, has been mixed with it. This is the famous labor theory of the origin of property right, but this labor understood in the widest sense, where *every* effort, even the picking up of something, is sufficient for getting the thing.

The second kind of limitation of appropriation is this: I may appropriate as much and only as much as is necessary for my self-preservation. Good. But of course this is not quite sufficient because in some climates, at any rate, there are differences of seasons and you have to think of the time then when there is no food available. So this must be reasonably enlarged. You may appropriate as much as necessary for your self-preservation now or in the foreseeable future, say, in the next half year. So we must not be—must enlarge this. We must go so far as to give every man the right to appropriate as much as can be *useful* to him. Now "useful to him," that is ambiguous. It may be useful to him in itself, it may also become useful to him through bartering,

[xvii] *Second Treatise*, chapter 5.

and you must see that enlarges the situation considerably. You can figure out perhaps how many apples a man could use in the coming winter for himself and for his family, but if he can also appropriate as much as he can barter, then he can get quite a lot of them. Good. But there is one strict limitation: you must not appropriate things which may *spoil*.[xviii] For example, let us take this. As you know, some apples rot very soon, and so if you pick them up, you simply take them away from others without any benefit for yourself. That is simply an unjust action. And here there follows this—look, these are all Locke's details, and they are very important to see as soon as you begin translating them into more practical terms. Now Locke uses the examples of plants and nuts. Plants rot easily; therefore you cannot appropriate much of them. But [of] nuts you can take quite a bit. Good. Now of the things are things which do not spoil *at all*, of them you may appropriate as many as you please by the right of nature. Now what are these [interesting] things which men sometimes appropriate which are useless for self-preservation in the state of nature? Well, sparkling pebbles, and gold, and silver. Now we come somewhat closer to the interesting problem. So translated: natural law entitles a man to accumulate as much gold and silver as he pleases. There is no natural law limitation—i.e., there is no moral limitation, that is the same thing—to avarice in any form. And this is surely an interesting doctrine because no one would quarrel with Locke about plants and nuts. But this is a problem of some importance. Yes?

Student: . . . enough of this . . . to everybody, and didn't Adam Smith also think this . . .

LS: You see, the point is this. The situation changes in very interesting ways after man has entered society. This is all in the state of nature. But the interesting thing is that the right to the unlimited acquisition of gold and silver is not affected by that transition. That is to say, in a state of affairs where the possession of very great, so to say of unlimited, wealth is tremendously important. Ya? This right still remains. Now what you say, this is one of the difficulties. Can you tell me why—I mean, there is one right in the law of nature, as Locke teaches it, which is strict in the state of nature and which has simply vanished in the state of civil society, and that is the law against *waste*. Why does the law of nature forbid waste in the state of nature if there is such an abundance of all things? As Locke puts it—I mean, Locke quotes the New Testament verse: God has given for us richly, upon us.[xix] But then he interprets it: What is given to us by nature are the almost useless materials. Nature gives us *only* materials which, if they are not worked upon, if they are not processed in a way in which the savages cannot process them, are of very little value. There is in fact scarcity in the state of nature. In fact. This is one of the contradictions which come out only with the progress of the argument.[xx] Mr. Boyan?

Mr. Boyan: I am trying to find out if there is a contradiction between the second and third law. You stated—in the order that you stated, in the first one that you can appropriate what is necessary and useful to you, and then this other standard has to do with the spoiling of goods. But if you accumulate an unlimited amount of gold and silver, is it useful or necessary to you, to your self-preservation?

LS: Ya, but in the state of nature they are wholly useless to you. Wholly useless, I mean, unless you like to look at gold and silver, but they are wholly useless for your self-preservation, and

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[xviii] *Second Treatise*, chapter 5, section 31.
[xix] 1 Timothy 6:17: "Their trust should be in God, who richly gives us all we need for our enjoyment."
[xx] See *Second Treatise*, chapter 5, sections 31 and 43.

therefore Locke can say without alarming anybody that [of] these useless things you may accumulate as much as you can. But the thing becomes interesting in civil society, where gold and silver become *the* lust of the commonwealth, as Hobbes calls it. Do you see? Here this is no longer stated but appears clearly when you follow the argument. The abandonment of any limitations to acquisition of gold and silver is in no way changed in the state of civil society. Locke teaches in effect that there is no moral rule, limited acquisition, whereas the traditional natural law did teach it. That is the revolutionary element of Locke, Locke's teaching about property. That is not the only one, but that is the important part. May I first continue? I will be through very soon, but I must make a few points.

Now another element of the doctrine of property is this. There are no strings attached to the acquisition of property. In other words, in acquiring you think only of your need, and if you comply with these rules, no waste. Don't accumulate, gather too many plants. This you must learn, but there is no concern for the need of other human beings. And this is a very interesting, complicated argument, one ground [of it] being, as one of you said, abundance: there is so much around that you do not have to consider anybody else. But the other ground is of course equally good: the ground of penury. If men live in starvation conditions in the state of nature, then of course they are not compelled to consider the needs of others because they themselves can barely stay alive. That is a great subtlety of the argument. Whether you start with the Golden Age angle or the Hobbean angle, you will reach the same conclusion. But this conclusion stands: there is no natural duty of charity.

Now this point remains intact in civil society. There is an unlimited right of acquisition. Here again misunderstandings are easily possible, because the word which [12][Locke] uses is property, and of course most people, most theorists, especially Aristotle but almost every one of the great theorists was in favor of private property. And the right of property as Locke understands it are two *entirely* different things: whether you say it is good that everyone should have property of his own, and whether you say everyone may acquire as much as he sees fit, are two entirely different propositions. When Aristotle defends the right of property, he has in mind that everyone, every citizen, should have some landed estate and should be of some reasonable wealth, but there is of course not the slightest question for Aristotle that the government may establish ceilings; for example, [that it] may make very incisive rules regarding the acquisition as well as administration of property. The clearest expression I believe we find in *Federalist Papers*, number 10, when Madison says that this is—I have forgotten now the literal formulation—the protection of the unequal faculties of *acquiring*, the faculties of acquiring property, as distinguished from property.[xxi] Well, if I may use one of these terrible words which are often badly used: when the older thinkers thought of static property, Locke thinks of dynamic property. That is surely the case.

And now we come to the *decisive* difference between the state of nature and the state of civil society in Locke's scheme. We have heard that *the* title to a property is not need itself. The need is as it were [the] foundation; the title is constituted by labor. Only what you have acquired; for example, if you have cultivated a piece of land and roaded a piece of forest, it is all yours. Now according to Locke's teaching, in civil society labor is no longer *the* title to property. In other

[xxi] Madison writes in *Federalist* 10 that the protection of "the diversity in the faculties of men" is "the first object of government."

words, Locke begins like the socialists and he ends in a very unsocialist manner, and therefore both camps are indebted to him. In civil society, you acquire property simply in the ways in which the positive law stipulates—inheritance, buying and selling, and whatever else may be—yet labor retains its decisive significance not as a title to property, but as an origin of all value. All value is produced by labor, by human labor, but this does not mean that labor alone entitles you to property. You can very well do practically nothing, only give some suggestions perhaps and other people do the work, and this is your title to property. But labor is the origin of all value. Nature supplies only the almost worthless materials. There is a very interesting—well, Locke describes very impressively what we owe to labor when we only look at a piece of bread: How many men had to work until this bread is on our table? This is almost literally taken over from a passage in Cicero's *Offices*.[xxii] It is one of these famous agreements between Locke and the tradition. But when you read it in Cicero, it means something entirely different. Cicero uses it in order to prove how much of our life depends on *cooperation* among ourselves, how many men must cooperate so that we can live well; for Locke it is meant to prove that almost all value is due to human labor.

Now this of course means then that we must *encourage* labor to the highest possible degree if we must encourage productivity, as it is called. Now how can this take place? Now Locke looks around and sees the human race consists roughly of two types, one of which is called the rational and industrious, and the other are the irrational and the lazy. And the great problem of civil society consists in giving the rational and industrious the opportunity of setting the lazy and irrational to work. This is perfectly just because it improves the lot of all, and the clear proof is this. Locke compares a day-laborer in England in 1680, let us say—no, not today, in Labour Britain[xxiii]—with a king in America, meaning a chieftain of the red Indians. And now look how well [13][Locke's] day-laborer in Britain is compared with a king in America. Well, of course, now presently you see the situation has grossly, greatly changed. Now this proves, this shows the virtues of the emancipation of acquisitiveness. Unlimited appropriation without concern for the need of others is true charity because if you have a beggar and he will go to the next pub and he will be more miserable than he was before, but if you force him to work, that is different. And one can describe it as follows. You have people living in a very simple way on the poor gifts of nature, say, lying on the banana tree and just waiting until bananas fall down, [then] eating them, that is all they do. Now the task consists of course in changing the situation. There are no longer any bananas which supply them. The word used and taken up from ordinary usage by Locke is "enclosure." The more parts of the common, of the natural common, are enclosed by the rational and industrious, the more will the irrational and lazy be compelled to work *for* the rational and industrious, and therefore we improve the lot of all. This is I think the truly revolutionary doctrine of Locke. And it is not identical with Hobbes's teaching because Hobbes has never developed it, but it is a development, and a very original development, of Hobbes's doctrine. And you can easily see that this dualism—labor the title to property, and labor the origin of all value—explains sufficiently the origin, in a way, in a general way, [14]of both capitalist and socialist doctrines: the socialists as it were insisting on labor as the title to property,[15] and the capitalists insisting on labor as the origin of all value. Locke's teaching on property is revolutionary both with respect to the biblical teaching and to classical philosophy. If you would

[xxii] So to speak. Cicero *De Officiis* 2.3-4.
[xxiii] Though the Labour Party governed in the immediate postwar years (1945-1951), the Conservative Party was in Power from 1951 until 1964, when Labour leader Harold Wilson became prime minister.

read the *Two Treatises*, the first treatise is polemical against Filmer's divine right of kings. And since Filmer's teaching is based on Scripture, Locke uses both Scripture and scriptural language much more than in the second part. Now in the first part he does speak of charity, but in the second part, and especially in that key chapter on property itself, he is silent about that.

Now this difference between Locke as well as Hobbes and the tradition I stated already last time: the shift from natural duties to natural rights. This means, in other words, a shift from man's *end* to man without regard to his ends. Man, not man's end, is the center or origin. Man is the origin of all value. This is said by Locke explicitly only with a view to the so-called material goods, but it has a much broader meaning: not imitation of nature, but conquest of nature. Man is emancipated from nature and natural sociality by acquisitiveness, which is necessarily beneficial, necessarily but accidentally. I mean, no one intends—the cabinetmaker, the baker does not *intend* to benefit you, but he cannot help benefiting you if he wishes to benefit himself. This [is what] I mean by necessary but accidental beneficence. The restraint of the appetites, regarding which all the old tradition was unanimous, is replaced by a *mechanism* whose effect is humane.

Now this presupposes, as Locke states in the strongest possible terms, the intervention of money. Without money, the whole thing won't work. And money was always regarded as the most obvious example of conventional things, stamp put on it. The rule of nature is replaced by the rule of convention; and this finds a parallel in Locke's doctrine of knowledge. The notions we need for any understanding are called by Locke abstract ideas or abstract ideas of a certain kind. What are these abstract ideas, like man, dog, motion, whatever? They are the creatures of the understanding. The human understanding creates them. They are not in any way the work of nature, of nature in ourselves. Understanding and science stand in the same relation to the given, the sense data, in which human labor stands to its raw materials. The meaning comes from human productivity in both cases, so close is the parallelism between the economic teaching and the so-called epistemological teaching.

And this is all the more strange since Locke is emphatically a hedonist, a man who identifies the good with the pleasant, and the pleasant is of course is primarily the *sensually* pleasant. But his hedonism is very different from what we ordinarily would understand by hedonism. [16]The greatest happiness consists, one would expect, in the enjoyment of the greatest pleasures, but Locke says the greatest happiness consists in having those things which produce the greatest pleasures. It's not quite the same thing. One could say it is the same thing, because if you have the things which produce the greatest pleasures, you will surely have the greatest pleasures, but this would be a wrong conclusion. The things which produce the greatest pleasure, the other name for that is *power*. Happiness consists in possessing the greatest power. There is no possibility on the Lockean basis for distinguishing between *natural* pleasures and pleasures which are *against* nature. Pleasure and pain, these things are for different men different things. So absolute subjectivism: no objective distinctions between preferable and nonpreferable pleasures. There is no highest good, as Locke says, simply repeating Hobbes.

You must not forget that the Epicureans of old, older hedonists, admitted as much a highest good as Plato and Aristotle did. This denial of a highest good is an extremely interesting thesis. But Hobbes at any rate had said—and this reveals the man wonderfully, I believe—there is no highest good, but there is a highest evil: death, of course. Death. So you see how the whole life

becomes oriented: on the side of the good things we have no orientation because [of] an anarchic agglomerate of goods; but on the side of evil there is something which stands out as *the* terror of human life, death. Locke does not say this explicitly, but in fact: he says the desire is always moved by *evil*, to fly [from] it. Desire is never moved by something *desirable*, beckoning us, always something, an evilness, from which we fly. Now the strongest desire according to Locke is the desire for self-preservation. But according to these principles, this must be understood as follows. The evil here is death. It is the terrible nature of death which makes us move. Nature still determines us according to Locke as well as to Hobbes, but in a very different way from the way it was thought to determine us in the past. Nature determines that from which desire flies away. Nature is still a standard, but a negative standard. Nature is that which has to be overcome. That gives some indication. The term "conquest of nature" is of course very revealing, because you do not conquer anything strictly speaking, unless it is an enemy. This, I think, we have to have in order to make clear the character of Locke's teaching.

But to repeat the main point, the decisive corrective of Locke, which Locke makes of the Hobbean teaching, concerns the status of property. And from this everything else follows, because if [the notion that] the property of the individual is the, is a, pillar of civil society is sacrosanct, then there must be effective guarantees that the government will not interfere with that property, and that means limited government. Because the case we discussed when speaking of Hobbes is very uninteresting: very few governments are interested in killing indiscriminately their subjects, but there are very many governments which are very much interested in taking away considerable parts of the subjects' property. So in other words, in the case of Hobbes we had to do with a kind of TV program, if I may say so—you know, a fantastic case which is of no great concern. But [in] the case of property, that truck comes home; and therefore Locke's doctrine had an infinitely greater practical effect, a more immediate practical effect than that of [17][Hobbes]. Everything turns around this doctrine of property. Locke goes so far as to sometimes simply speak [18]only of the right to property, and including in it life and liberty, because property is a telling thing and [in the whole construction]. Now how this in its way already prepares also the Marxist economic interpretation of history is I believe rather obvious, because this property must be produced, especially according to Locke's teaching, and therefore production, the modes of production, become eventually the great theme of the understanding of man.

Now I leave it at this point. I would like to speak then of Rousseau, but I think I should first find out whether I have made myself understood. Mr. Erikson?[19]

Mr. Erikson: . . . Hobbes . . .

LS: I haven't understood you. You must speak louder.

Mr. Erikson: . . . at one point . . . created . . .

LS: Hobbes referred occasionally, or perhaps frequently to creation, you say.

Mr. Erikson: To create . . . justice.

LS: Ya, "create" is a very ambiguous word. The Romans spoke all the time of creating a consul. I mean, you know, creating does not necessarily have this very specific meaning; it has this use for the translation of that Hebrew word by which Creation is designated at the beginning of the Bible. But when people speak today—for example, "I must do some creative writing." You must have heard from many five, six-year old children [laughter]—then of course it does not have the simple [meaning], but it has the meaning which reminds us of the beginning of the Bible, creation almost of nothing. Ya? [Laughter] Ya, what do you mean? Surely. Well, more generally stated, [20]this fundamental notion underlying Locke is of course Hobbean. There is no question. But it is much further developed by Locke, especially in regard to the doctrine of property. Ya? [21]Hobbes speaks about these so-called economic questions also, but much more briefly and casually. And then the great practical change: absolute monarchy is impossible from Locke's point of view. And whereas what he wants to have is a republican government because—the strong executive, truth, ya? strong executive—and republican government. And more democratic than the House of Commons was in England at the time, taking care of the rotten boroughs—he did not like them—but [he was] surely not an unqualified democrat either. So, say, as a sensible Whig of the late eighteenth century would have understood the situation. That is, I think one can say, Locke's view. He was not particularly liked by the Whig leaders of his time, I have read somewhere, which does not surprise me at all because they were still much more old-fashioned than he was. So this I believe is not a very important point.

Student: Did Locke make any specifications as to the state of nature, I mean, of a historical nature?

LS: You mean whether he gave a kind of history of men from the beginning? No.

Same Student: Is it because that is in prehistorical times, or—?

LS: No, no, America, he says. In the beginning the whole world was America.[xxiv]

Same Student: In that case, there was civil society, in the beginning.

LS: Ya, but he did not regard these tribal organizations as, as—

Student: The Indian population?

LS: Sure, Indian. What do you think? [Laughter] How many white people were in America at this time? By the way, both men—that is interesting—both men, Hobbes and Locke, were connected with the early plantations. Do you know that? In the case of Locke it's well known, the Carolina statement. In Hobbes, it is not so well known. I happen to know it, because the family with which he was connected, the Cavendishes, [22]they belonged to one of these trade companies, I have forgotten now the exact title of this company, which had some property in the Southern states now.[xxv] So this is quite interesting. And Hobbes speaks about colonies in the *Leviathan*, there is a chapter.[23] Yes?

[xxiv] *Second Treatise*, chapter 5, section 49.

[xxv] The proprietors of Carolina included Locke's patron, Anthony Ashley Cooper (later first Earl of Shaftesbury), who employed Locke as their secretary. The final text of the Constitution of Carolina

Student: Where did you . . . the quote about the desire to fly evil?

LS: That is in the *Essay concerning Human Understanding*. You mean you want to have the reference?

Student: Yeah.

LS: I do not have it here, I am sorry to say. But it is clearly there.[xxvi]

Student: The second thing would be . . . I was wondering if Locke would really say there was property in the state of nature.

LS: I am sorry he says so, but it is a bit more complicated. Well, in the first place, [24]I think if one develops the theme one would say, just as in the case of Rousseau, there is property but very *insecure* property. But still if you have planted the land, if you have roaded the forest, or whatever it is, you have the right. Well, if other people have been deprived of any possibility of earning their living, then of course there is a conflict between your right of property and their right of simple self-preservation, and then there will be bloody fights. But Rousseau develops this at great length. Locke does not do that. Yes?

Student: I was wondering, he says that in the state of nature there is scarcity. This is pretty clear. And there is no title to property when there . . .

LS: Ya, it depends on what. I mean, for example, the acorn you eat, you have of course a title to appropriate it. But if you understand by property something which another man can still take away from you, not a turnip which you have already eaten.

Same Student: This is the problem. Because it seems to me in the state of nature there is going to be this kind of amoral scuffle.

LS: Ya, sure, I think that would follow from Locke. But of course it is not, of course not developed by Locke.

Same Student: He says, "I have no property in that which others can take from me without my consent."

(1669) was, as David Wootton states, "very much Locke's work." See Woottoon's introduction to *Political Writings of John Locke*, ed. David Woottoon (Mentor, 1993), 41, and the *Constitutions of Carolina* in the same volume, pp. 210-32. William Cavendish, of the family that was Hobbes's lifelong patron, was a principal investor in the Somers Isles Company, which administered Bermuda from 1615 to 1684. Noel Malcolm shows that Hobbes was a shareholder in both the Virginia Company and its sister organization, the Somers Islands Company. William Cavendish granted a share to Hobbes in the Virginia Company, and Hobbes attended its meetings for two years. See Noel Malcolm, *Aspects of Hobbes* (Oxford: Oxford University Press, 2002).

[xxvi] Perhaps 4.21.39, the section in "Of Power" with the heading "*Desire accompanies all uneasiness.*"

LS: Ya, but that may be in another context. You mean in paragraph 49 of the *Second Treatise*?

Same Student: I think it was in 29.

LS: As early as that?

Same Student: I just—I don't remember the exact paragraph.

LS: Now that is I think really a different context, a different [place]. When he speaks of property thematically in the fifth chapter, this is not the fifth chapter, then I believe the implication is [25]that there may be a bloody war between the haves and the have-nots, and the only way out is civil society. But Locke does not spell that out. Rousseau spells it out.

Same Student: I was wondering what . . . this, the whole business about father and son in which he says that fathers . . . the son is not capable of applying the law of nature to . . . and then he says that . . .

LS: This is still harmless. Really, that is trivial because that means only [that] Locke wants to show that there is no right of the father in an extreme sense—as Filmer had meant it, you know—but that as soon as the children have grown up and have reached the age of reason, they are no longer subject to their father. And to those who are incompetent, also in a limited sense means moronic people, [it] does not mean ordinary people.

Same Student: Well, he does say most men are not following the law of nature.

LS: Yes, but that does not mean they could not know it.

Same Student: I'm wondering—

LS: Do you see that? If most men are not followers, I believe he says not very strict followers, of the laws of nature, that is one thing. But another thing is to say they are incapable of knowing it, which he does not say here. That comes out only if one takes into consideration the broader argument not only of the *Essay concerning Human Understanding* but also of his book *The Reasonableness of Christianity*, which is indispensable I believe for a full understanding of Locke's political doctrine—*The Reasonableness of Christianity*, the main teaching being that there is only one teaching required for salvation, and that is the belief that Jesus is the Messiah, exactly as Hobbes said. And there is of course nothing said about Trinity, and therefore he was accused that he is not a Trinitarian. And then he wrote a very long book, a defense against a bishop, of course not Hobbes's bishop; I forgot his name. Hobbes's bishop was called Bramhall. I forgot the name of Locke's bishop. Pardon? Stillingfleet? I do not know. But I am not sure. All right.

Student: Worcester?

LS: Bishop *of* Worcester, ya, but . . . Who was?

Student: Stillingfleet.

LS: Was it Stillingfleet? All right, then it was.[xxvii] [Laughter] And where Locke never really proved that he a Trinitarian. But of course the bishop was never able to prove that [Locke][xxviii] was not a Trinitarian, and so by other clever devices Locke somehow succeeded in preventing the worst. Yes?

Student: If there is no hierarchy of goods, then why are the lazy and irrational better off if they work?

LS: Because there is no hierarchy of goods, but there is an absolute standard. I mean, let us assume that there is no hierarchy of goods. There is an absolute evil: death. The opposite of death—so by this very fact self-preservation is shown to be *the* decisive consideration. Now then you can make on this basis a classification of men. Those who go about, *rationally* go about, preserving themselves, these are the rational and industrious; and those who do not [are] the irrational and lazy. Ya? You see, all these men were still—to that extent it is perfectly true: as you say, they were still natural law teachers, they were not twentieth-century relativists. That is perfectly clear, they are not. They were satisfied that the unique position of self-preservation is sufficient for guiding man in his life.

I must add one point. Whenever you have an end which is absolutely stable, the question of the means arises. Now regarding the means, the first question, as Aristotle put it, or the highest question is: Which means are *easy* and which are complicated? Ya? Complicated. And every sane man prefers of course the easy means. That the means must bring about the end, that they must be efficient, goes without saying. Good. Now if you apply it to the case of self-preservation, you see, you can have the *mere* self-preservation, the *bare* self-preservation, nothing else. But then also you can have it in an easy manner, so you do not have to make very great efforts when you are hungry again in a few hours and simply go to your icebox. Let us call this, as Locke called it, comfortable self-preservation.[xxix] And therefore the full formula of Locke is really comfortable self-preservation, meaning if you cannot have anything else, then mere self-preservation; but if you can preserve yourself comfortably, only a fool would not accept it. And therefore we can also say the rational and industrious people are the people who are good at preserving themselves comfortably. And I think this is not an arbitrary standard, because it is admitted by many people as sufficient. I think [there are] quite a few people who act on this principle. And then of course other considerations would come in which Locke does not emphasize, namely, that there is such a thing as glory, the glory of the great benefactor. And of course this man who has been such a benefactor at least to England and this country, that this goes much beyond his great success in comfortable self-preservation, which he also had. Yes?

[xxvii] Edward Stillingfleet, bishop of Worcester, attacked Locke in his *Vindication of the Doctrine of the Trinity* (1696), chiefly for consequences Toland, in his *Christianity not mysterious,* had drawn from Locke In January 1697, Locke replied in *A Letter to the Bishop of Worcester.* Stillingfleet answered in May; and Locke replied with a second letter in August. Stillingfleet replied again in 1698, and Locke's long third letter appeared in 1699. The bishop's death later in the same year put an end to the controversy.
[xxviii] Strauss says "Hobbes" here but presumably means Locke.
[xxix] Locke, *First Treatise*, sec. 87.

Student: Mr. Strauss . . . accepting the majority . . .

LS: Yes.

Student: . . . because of this theoretical foundation for really the greatest . . . that's like Plato's idea also of wisdom tempered by consent because . . .

LS: Yes, very well.

Same Student: But the problem is that men are not created equal, it appears to me. And I am wondering what, therefore—well, I think of Jefferson's saying that it is self-evident that all men are created equal, and . . . related to Locke, Jefferson . . . from Locke, is there another, is there a stronger foundation, some sort of a moral or religious foundation?

LS: Well, in the general view of the time, of course it was. But the question is how this looks in the greatest theorists of the time. And to the extent to which Locke is the most famous theorist, we have to study Locke's works and not simply say, as quite a few interpreters say, "Well, Locke of course shared fundamentally the convictions of his countrymen," which convictions by the way were by no means unanimous because there was a very strong anti-Whig party in England at the time. One has to study. The only way to find out what Locke thought is to study Locke, and to study the whole Locke. And there it is—no, I think one can *prove* that Locke did not think of all men created in the image of God as a ground of equality. This I believe one can prove. [26]Unfortunately I do not have a ready command of the passage in Locke now; I remember that I have discussed this problem in a footnote in my *Natural Right and History* chapter on Locke. It concerns the question—a favorite passage from the Bible, the Old Testament, "whosoever sheddeth man's blood, his blood shall be shed again."[xxx] This he quotes. I mean, that is law of nature. It follows of course from self-preservation in the toughest sense of the word, because the others will no longer be sure of their lives and such . . . But in the Bible this is connected with a reason: that man was created in the image of God. This reasoning is dropped by Locke; does not say a word about it. He speaks of the murderer as a noxious being—how does he say?—noxious beings like tigers and other savage beasts, I believe. So in other words, the killing of murderers has exactly the same character as the killing of a mad dog. There is no question even of a being created in the image of God coming here.

No, Locke speaks as much as he can biblical language, but he also avoids it very much; and the most striking thing is of course that he never quotes Romans 13, "be subject to the higher powers." That is also related. Mr. Cox, Richard Cox in his book—how is it called?—*Locke's Theory of International* Relations,[xxxi] a Chicago doctoral dissertation originally, discussed all the biblical passages used by Locke. That's very interesting, what Locke does with them. Now Locke's key formula for the Bible is the story, not only from the New Testament but the also from the Old Testament, the Jephtha story. The appeal to heaven, the appeal to heaven: that whenever there is a conflict between the people and the government, the appeal to heaven. That means, in plain English, civil war. Now in the Bible, the story has nothing to do with the relation between people and government, but with the rights of conquest. Now if you read the passage in

[xxx] *Natural Right and History*, 223, n. 84.
[xxxi] *Locke on War and Peace* (Oxford: Clarendon Press, 1960).

Judges where the story of Jephtha is told, you will see that the biblical view of the rights of conquest is *wholly* different from Locke's view. No, Locke cannot be—I mean, you cannot regard him as a theological authority.

Student: Oh, no, I was not doing that . . . [The doctrine has to be consistent.] Then it is not a matter of majority; it is matter of whether there's the strength . . .

LS: Ya, but, all right. But what is the difficulty then? Self-preservation is the basis. Is self-preservation endangered by the majority rule as he states it? That would be the question. And Locke would deny it.

Same Student: No, no, no, I was thinking that the majority has no right by nature to rule. It is the strength that has the right by nature to rule, and it does not have to be a majority if that is . . .

LS: Ya, but, who else could have the—how can you settle it? If we want to preserve ourselves, we need peace. We need government, and therefore we must first have a decision as to what kind of government. Who is going to make the decision? Since all are equal, each has the same vote. Each has the same vote. That is demanded by justice. And now [27]if there is no unanimity, what would you do? If you forget about this reason, there is another reason, of course, because there is fundamentally only one alternative, namely, that the minority should have it. And assuming this absurdity for one moment, it will lead to a simple result that everyone will work for the opposite which he really favors. So you get exactly the same result as you had before.

Same Student: Isn't that a further dilution of the principle of strength? Isn't that just a conventional dilution to say we'll take the majority?

LS: Ya, that was the traditional view, that the majority principle is a conventional principle. But Locke denies that, by the way, just as Spinoza before him denies it, because he says it is a natural principle, because that the greater force should win over the smaller force is a natural principle, a simply mechanical principle. And Locke would say of course that does not apply universally, but in this particular case it is the only thing of which one can possibly think. It has also another point which you must not forget: the *realism*, the trust in physical strength. You know, "realism" in quotation marks. The majority—other things being equal, the majority is in a better position to enforce its decision than the minority.

Same Student: With its gun.

LS: Ya, but if the minority is heavily armed and the majority is completely disarmed, of course not. But if in the state of nature, no one is armed yet. Yes?

Student: In order to preserve ourselves we need a government. Does Locke's contract set up a government or society?

LS: The contract sets up society. Ya, but, then—

Same Student: . . .

LS: Then society establishes a government. Ya. But what Locke does, that is very interesting.[28] In contradistinction to Rousseau, Locke takes no precaution for the preservation of the people as an agent. The people establish what he calls supreme power, [29]which is a version of Hobbes's Leviathan. Supreme power, and that means primarily of course the legislative. This legislative *absorbs* all important functions. The sovereignty of the people is completely dormant—completely dormant—and becomes important only when there is great popular dissatisfaction, not only with the present administration but with the whole constitution, with the whole system. And then the dormant power of the people becomes again the active constituent power which establishes a new constitution. And so there is no constitutional provision, of course [there] cannot be, for revolution. I mean, there is not a kind of convention of the people, say, of the people as people regularly who determine about whether the constitution should be preserved or not. That does not exist. The people become again an amorphous mass of subjects, activated only in the case of revolution; and that means of course in empirical terms that some men, perhaps many men, *claiming* to act on behalf of the people change the constitution, and the others authorize it retroactively by silence, by seeming satisfaction. It is clear that you cannot have a constitutional doctrine of revolution. You can have a *theory* of the legitimacy of revolution, but you cannot have constitutional provisions of revolution because[30] of course then you would have to have a distinct organ, that, say, all or so-and-so many million Englishmen would assemble for the purpose of changing the constitution. It is impossible. And you know what in practice can be done is if you have a system which is on the whole satisfactory and have the possibility of constitutional amendments as we have them in this country. It is extremely *difficult* to amend but it is not impossible; therefore there is no longer an excuse for revolution.

Such is I think the theory underlying the Constitution of this country. Locke admitted it because, mainly because there is also another point which one has to consider. What is the precise difference? Let me see. No, I think it is ultimately the difference between Locke and American doctrine, including probably Montesquieu already, is the simple impossibility of making legal provisions for revolution. That is impossible. And Locke, not writing a legal text, a constitution, could of course speak, discuss under what conditions and on what basis revolutions are legitimate. I think that makes sense, does it not, that it is impossible to make a constitution which provides for revolution? A constitution may provide for amendments, but not, but not—

Student: Some state constitutions have . . .

LS: The older ones, ya.

Same Student: Ya.

LS: Ya.

Same Student: They have . . .

LS: Ya, but that of course, it would be interesting to see what the law courts would say if someone tries to do it. But there are some cases, Shays's Rebellion. [Laughter] Yes?

Student: The distinction between the rational and industrious people and the irrational and lazy people, together with the right of . . . to . . . inevitably leads to the minority which is more powerful than the majority . . .

LS: Ya, [31]that is true, but Locke would say that's good because, I mean, should the lazy people have the decisive say? It would not be good. In other words, what he had in mind was an elective system which would be reasonable and no rotten boroughs but in which the interests of wealth as wealth were sufficiently guaranteed. That was Locke's interest. [32]But [33]you must discuss it in terms of Locke's own statement of the problem. If the people who do no work do so not because they are lazy but because of economic crises and unemployment of various kinds, that is of course another matter; and this leads therefore then to a strengthening of the welfare or socialist wing in Locke's doctrine. Ya? But disregarding that, if it is so that the majority of men are lazy and irrational and the minority are rational and industrious, is it not true that it would be better that they have the decisive say, especially if, as Locke also contends, [34]improving their lot cannot but lead to the improvement of the lot of others. I mean, that these lazy fellows who like to lie in the sun do not *like* it that they are forced to work does not mean of course that it is not to their good. But—

Student: But it isn't really so obvious that the people who—I mean most people work even though they do not have property—

LS: Ya, but that was not quite so in Locke's time. The development of the industrial society and all these complexities, especially at the beginning of the nineteenth century, led then to the great revulsion against Locke—when Carlyle spoke of the "dismal science," economics, which[35] economics stems of course from Hobbes–Locke. You know, the first form which it took was called political arithmetic, and the author of that has a very nice name, and it was Sir William Petty.[xxxii] [Laughter] And Sir William Petty—yes, also interesting, ya, I did not think of that—[36]was a personal pupil of Hobbes. Petty, so close is the connection. And Petty, by the way—this is also one of the nice parts of the argument—Petty went so far as to figure out the monetary value of a human being [laughter]; I mean, you know, a strictly economical measure of everything. And he did this—I have told this so frequently that there are quite a few who have heard it if they have not read it in Montesquieu—he figured it out by looking up what a human being fetches at a slave market in Algiers. And so a really objective study. [Laughter] [37]But then Montesquieu came, who was also a great economist, and questioned the wisdom of the decision and said: This is the value of an Englishman,[xxxiii] [laughter] and other people fetch much less in Algiers. And there are places where the human being is worth zero, and other places where he is even worth less than zero—I mean, when you have tremendous overpopulation plus famine.

This, by the way, is also of great interest because it is an indication of the problem of the right of self-preservation. You see, if the society is supposed to guarantee self-preservation but if it is incapable of doing so because of overpopulation plus famine, what can be done? And you are right where we are today, because if you scratch the surface of the argument regarding the underdeveloped countries and so on, you come down to this self-preservation and comfortable

[xxxii] Sir William Petty (1623-1687). His main works on economics are *Treatise of Taxes and Contributions* (1662), *Verbum Sapienti* (1665) and *Quantulumcunque concerning money* (1682).
[xxxiii] *The Spirit of the Laws*, 23.15.

self-preservation issue as in the seventeenth century, [38]only today it is no longer presented as a natural right teaching, although it is still *meant* to be natural right by all people who are seriously concerned with it . . . But the social science doctrine can no longer permit it and calls this an ideology, [39]you know, or whatever it may be; in other words, something fundamentally arbitrary. But if you look at the convictions as distinguished from the assertions, you see it is meant to be more than an ideology but *the* right order of society. [40]In other words, it is a *disguised* natural right doctrine up to the present day. Yes? You want to say something.

Student: . . . Locke was mainly focused on this . . . why should we . . . people are—the majority is propertyless.

LS: Ya, but it was not perhaps so propertyless. I do not remember now what the precise—whether Locke thought of no property qualification whatever. But they did take for granted that there would be *some* property qualification, not only for passive but rather for active electors to parliament. Ya? But the main point is this. We must go back to the principle: self-preservation. In this respect, *all* have the same interest. And what this interest in crude, massive terms means is very easy to explain to everyone. You know, for example, regarding certain things in penal law: say, torture is not a good way of finding out who is guilty and who is innocent. Ya? And this kind of thing. No, I think one must assume that however theoretically questionable the views of Locke may be, that his common sense was of course quite extraordinary. I mean, he taught men something very specific and useful for the time, not from every point of view but from the point of view of the substantial part of the population. So there is no—this problem that came up only with the development of the industrial society, of a so-called proletariat, which did not in this form exist then. I mean, what [41][Locke] had in mind were the freeholders of England, you know, and they [were] of course property owners; and the smallest property owner had something in common with the largest property owner: the concern with the protection of property.

Student: . . .

LS: Ya, but apart from the atrocious theoretical reasoning, I mean that it is absolutely impossible to find out any man today or in the seventeenth century who could claim to be the oldest heir of Adam. And apart from this whole absurdity, one could rightly say the *conclusion* from the fact that the father has power over his children to an absolute monarch [42]being the only legitimate ruler of people at large is of course also absurd. And Locke's simple argument against Sir Robert, that Sir Robert always quotes that biblical commandment only in half: Honor thy father; what about the mother? And we have already two rulers. You know? [Laughter] The interesting question regarding Filmer is not any intrinsic merits of Filmer's argument—Filmer was a very poor fish—but it was: Why did Locke take the great trouble of refuting this asinine argument at such length? Now part of the answer is, it was still liked very much by the British gentry at the time. They preferred Filmer to Hobbes for [an] obvious reason: because Hobbes shocked their piety and Filmer did not. So Filmer still was a great ideologist of the Tudor monarchy when Locke wrote that. I do not believe that this is a sufficient explanation, but it is good enough for the present occasion. Is this all right, Mr. . . . ?

Student: . . . showed with Locke was really concerned with, also with the question of . . .

LS: With limitation of property? There is no—

Same Student: . . . of property.

LS: Ya, but I said this, [43]that Locke wants to have—the first great difference between Hobbes and Locke is that Locke is in favor of limited government. I said this and I added that I will not go into this because it is well-known and it is not immediately relevant to the subject of this course, which is natural right. Sure. Yes? No, I think you were—

Student: You say that Locke says that the injunction against waste in the state of civil society—

LS: Ya, he silently abolishes that. Well, no I think I you ask me on my way over, ya? Because it is very late already. So next Wednesday we have the last lecture of this course, and next Monday at the same time in this room you will undergo this humiliating thing. [Laughter]

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[1] Deleted "you are."
[2] Deleted "wicked."
[3] Deleted "Locke."
[4] Deleted "that."
[5] Deleted "and."
[6] Deleted "the."
[7] Deleted "majority."
[8] Deleted "but."
[9] Deletd "it."
[10] Deleted "is."
[11] Deleted "and."
[12] Deleted "Hobbes."
[13] Deleted "Hobbes."
[14] Deleted "the origin."
[15] Deleted "—[inaudible words] of course—."
[16] Deleted "Locke says."
[17] Deleted "Locke."
[18] Deleted "to."

[19] Deleted "**Mr. Erikson**: . . . **LS**: Bit louder, Mr. Erikson."

[20] Deleted "there is very much I mean."
[21] Deleted "Locke."
[22] Deleted "they were."
[23] *Leviathan*, ch. XXII.
[24]Deleted "well."
[25] Deleted "that."
[26] Deleted "because."
[27] Deleted "ya, but."
[28] Deleted "The government, in contradistinction to Locke—to Rousseau, Hobbes—no, let me begin again."
[29] Deleted "which is practically."
[30] Deleted "then, then."
[31] Deleted "but."
[32] Deleted "yeah."
[33] Deleted "is it, I mean."
[34] Deleted "their."
[35] Deleted "—and the."

[36] Deleted “and he.”
[37] Deleted “but then.”
[38] Deleted “you know this is not.”
[39] Deleted “yeah.”
[40] Deleted “yeah.”
[41] Deleted “he.”
[42] Deleted “having.”
[43] Deleted “I said this.”

Session 16: November 28, 1962

Leo Strauss: [In progress] We discussed the beginning of the tradition where [there was] a teaching of natural right. [That] this is not something like the rights of men of modern times, this should be clear by now. If one could translate more literally, it would be a doctrine of what is by nature just in Plato and in Aristotle. Then we looked at the doctrine of natural law as it came to the fore in the Stoic teaching [or] doctrine, as it is especially in Cicero, and we came to the peak of the natural law teaching in Thomas Aquinas. We turned then to the radical change in this teaching, the development of modern natural right or modern natural law, a development[1] of which Locke marks the peak. And one can understand the whole problem of natural law in a nutshell, which is of course never quite sufficient, by a thorough comparison of Locke's teaching with that of Thomas Aquinas. The key point here is that the hierarchy of natural inclinations from which the Thomistic natural law starts is rejected. Only one natural inclination remains, the one which in the Thomistic scheme is the lowest; and the reason we have seen is that this is thought to be the most effective, at least in most men most of the time, whereas the higher inclinations do not have this effectiveness. In other words, this new natural law teaching or natural right teaching claims to be *realistic*, taking men as they are. But, as is indicated by the formula "most men, most of the time," it is of course not exact. I mean, that is a crude beginning useful for quite a few crude purposes, but it is not exact. This new geometric natural law starts from a very inexact highest premise, and this is due ultimately to the fact that the abstraction from the higher inclinations is defensible on crude, practical grounds but is of course not, [and] cannot be, truly exact. This new natural right teaching is bound to be very unrealistic despite the promising realism with which it starts. Strictly speaking, there is of course no longer a *natural inclination* because when we speak of a natural inclination we imply the possibility of perversion of that inclination. This consideration is here absent. Self-preservation, or the fear of death, is rather the strongest *passion*. This is something very different. The other passions are not perversions or bad, but weaker, weaker than the fear of violent death, and therefore they do not offer a solid foundation.

Now my subject today in the last meeting is the decline of the modern natural right teaching. Strictly speaking, I should speak about four figures, if not about five: Rousseau, Kant, Burke, and Bentham. Well, I have to make a choice which I hope will be judicious. I begin with Rousseau. Rousseau is one of the most fertile writers of modern times. He can be compared in his effect, especially of course on continental Europe, I think only with two men: one before him, Descartes, the originator of that famous clear and distinct knowledge, rationalism; and after him, to Nietzsche. I would like to speak of three waves of modern thought, the one beginning with Machiavelli, the second with Rousseau, and the third with Nietzsche.[i]

Now Rousseau has surely this characteristic, that he is not what is called a systematic philosopher. He wrote only on very specific subjects, like political matters, education, and so on. He did not develop a system of philosophy in any sense, and yet he had an overpowering influence on some of the greatest systematic philosophers, men like Kant and Hegel. Now what

[i] Leo Strauss, "The Three Waves of Modernity," in *An Introduction to Political Philosophy: Ten Essays by Leo Strauss*, ed. Hilail Gildin (Detroit: Wayne State University Press, 1989), 81-98.

is Rousseau's position? What is he driving at? What strikes one perhaps first is Rousseau's opposition to modern political philosophy and the return to classic political philosophy. The moderns, he says, speak only of trade and finance; the ancients spoke of virtue and manners, and he fully agrees with this classical premise. His goal seems to be the city. He himself came from Geneva, a relatively close approximation to an ancient city. The *polis* seems to be the association he favored. There are quite a few passages where one could easily present him as a man who is trying to restore the Aristotelian teaching. The motto of one of his most famous writings, *The Discourse on the Origin of Inequality*, is taken from Aristotle's *Politics,* for example, and there are specific segments with which I do not wish to bore you.

Yet his most famous political work, especially *The Social Contract*, is clearly devoted to natural public law in the sense in which I defined it earlier. A natural public law is surely a subdivision of natural law. [2]In other words, he follows nevertheless the modern tradition and as a very strange development at the end of which he *seems* to approach the classical position. But this is somewhat set. Now he has made clear his position regarding natural law, especially at the beginning of his second discourse, *The Discourse on the Origin of Inequality*. He speaks there about the state of discussion regarding natural right or natural law, and he speaks especially of two groups of men: the modern jurists on the one hand, and Hobbes on the other. Now when you look at what he says about the modern jurists, you see he means by that the Thomistic tradition. They are modern in the sense that they are not ancient or classical. And they are jurists, i.e., he denies to them implicitly that they are philosophers. Now this doctrine he rejects, and he agrees in the decisive respect explicitly with Hobbes. Why? Because the modern jurists, as he says, have assumed that man as man is capable to understand the law of reason, the law of nature. In other words, that man is by nature capable to understand the natural law. Differently stated, that the natural law is sufficiently promulgated to men. Hobbes had denied that, as Rousseau reads him, and Rousseau agrees with Hobbes at this point; accordingly, he follows Hobbes regarding the starting point, self-preservation alone.

The argument goes on in the Hobbean way: right to self-preservation, right to the means of self-preservation, everyone is the judge of the means to self-preservation. But Hobbes nevertheless made mistakes, mistakes which Rousseau occasionally calls sophisms. Now what are they? Now Hobbes had said that the natural *law*, in contradistinction to the natural right, the law which commands peace and all virtues conducive to peace, consists only of "theorems and conclusions"[ii] (these were Hobbes's words), consequences we draw from the implications of self-preservation and the conditions of its protection. In other words, natural law as Hobbes understands it is the product only by reason, only by *calculating* reason. And this Rousseau regards as very insufficient and even as incompatible with Hobbes's realism—you know, that calculation, reason, should be so powerful over against the passions. The natural law is in need of support by passion. And Rousseau believes he has discovered such a passion, and this passion is compassion or pity; more generally stated, the *sentiment*, the heart. Sentiment and the heart. And the famous sentimentality of Rousseau shows here its great bearing for his whole doctrine.

Now what is this pity? Sympathy for human suffering. But who suffers most, generally speaking? And Rousseau says, the poor, the underdog. And who has most compassion? This is the underdog, [who] is the object of compassion. But who is the natural subject of compassion?

[ii] *Leviathan*, chap. 15.

Who are the compassionate human beings? Again, the poor. The rich and noble, believing [themselves] to be exempt from most sufferings, are hard-hearted. A very famous sentimental theme. So sympathy is of the poor and by the poor, one could say. You see here the connection between Rousseau and democracy immediately: this is a kind of a new democratic teaching based on sentiment. And this has had of course a world-shaking effect. When you read Tocqueville about the democracy in America and about what [is] the characteristic sentiment of democracy, you will find the reflection of Rousseau's remarks. I do not deny that [3]Tocqueville did make observations in this country, but these observations were guided however by a preconceived notion of democracy, and the preconception goes back to Rousseau.

But to come back to Rousseau again. Now this was then the first error of Hobbes, that he did not find a passionate, sentimental support for natural law. The second, in a way graver [error]: Hobbes did not return to the state of nature to which he promised to return. He claimed to have painted natural man but he painted only civil man, man molded already by civil society. Hobbes was right in saying that natural man is presocial, but he did not draw the conclusions from this sound premise. For if man is by nature presocial, in no way referred to other human beings, he is by nature free from pride, especially from concern with superiority to others and concern with recognition of superiority *by* others. So man[4] does not have by nature any pride. Pride comes in only with society. And if pride is the root of wickedness, as Hobbes had asserted, then it means society makes men bad. By nature, man is good—one of the most well-known theses of Rousseau. Rousseau asserts then that natural man is characterized by self-preservation plus pity, in contradistinction to Hobbes's self-preservation plus pride. That is the simple meaning of what people say: Hobbes said man is by nature bad, and Rousseau says man is by nature good. But we must take a further step beyond Hobbes, following the principles of Hobbes. If man is by nature presocial, then he cannot be rational as Hobbes had asserted, because reason cannot become effective without language, and language is obviously a social phenomenon. If man is by nature presocial, he is also by nature prerational.

Now we understand [5]what Rousseau means by saying man is by nature good. That is the direct opposite of what Aristotle says at the beginning of his *Politics* when he says that man without law and civil society is the most vicious and abominable of all animals. Rousseau says directly the opposite: man is depraved by society and by the intellect. Now since Rousseau was a man of very great common sense, at least in his judgment on broad matters as distinguished from his judgment on his private affairs, he must have had some qualification to it. Natural man proper, strictly natural man proper, where no human activity has yet molded him in any way is, as Rousseau emphasizes, a stupid animal. He compares him to a kind of orangutans. One seems to read Darwinian literature [in this], but it is definitely pre-Darwinian here. Then the question arises: How can a stupid animal, our ancestor, supply a standard to us who at least hope not to be stupid animals? The answer is this: in the *decisive* respect, we remain—man has remained the same. The decisive respect: self-preservation. Self-preservation remains the same despite the development from the stupid animal to man who needs society and is capable of living in society. But self-preservation strictly understood. No natural inclination to society, ever; Rousseau never admitted such a thing. [6]Even his friends, the French *Encyclopédists*, people like

Diderot,[iii] who were willing [7]to admit that men might be called not entirely inappropriately by nature social—Rousseau always rejected that. In this he remained a strict follower of Hobbes, and the reason I think is clear, because if man is by nature social, if man is by nature *directed* toward society then this end, society, casts its shadow on man from the very beginning. More simply, then [8]the fundamental fact is an *obligation* toward society. Duties are primary. And Rousseau is as anxious as was Hobbes to assert the primacy of right as distinguished from duty.

Now the argument of Rousseau is, then, if he . . . with his qualifications [admitted], the same as that of Hobbes. Since no man is under any obligation to anyone else by nature, and since all men are by nature equal, society can only arise from contract. That is the same as in Hobbes and Locke. But this is the decisive difference between Rousseau's understanding of the social contract and the earlier understanding. You remember the key point. Every man is by nature the judge of the means of his self-preservation according to Hobbes. But when he enters society that stops, naturally, because the very fact that everyone is a judge leads to the war of everybody against everybody. This must be abandoned. Rousseau demands that this be preserved in society. Everyone must remain the judge of the means of self-preservation, or as he puts it, man must remain as free after having entered society as he was theretofore. The tacit implication of Hobbes's and Locke's different doctrine was this, that "everyone is a judge" means of course that the fool has as much right to judge about his immediate self-preservation as the wise man. But surely Hobbes and Locke did not deny that many men at least are foolish, but they had the remedy for it. The folly of most men is in fact corrected by the surrender of the legislative power, i.e., of the power to judge of the means of self-preservation, to the sovereign. The sovereign *could* at least be an enlightened despot or his representatives, to whom he would surrender that according to Locke, [and] have at least a fair chance of being a kind of elite of the society. So folly and the power of folly could be thought to have been weakened by the entrance into society.

Rousseau seems to have—apparently he seems to have a simple-minded trust in the competence of each man, and this is however not quite so, because Rousseau believes he has devised, has seen the principle which makes possible the preservation of the judgment of each with wisdom, and the name of it is the general will: the general will; that is, the will of society. And the general will, according to Rousseau, is infallible. Now how is this possible? Everyone enters the assembly. Everyone subject to a law must have had his say in the making of the law. That is the principle. That is of course different also from Locke. Everyone subject to a law must have had his say in the making of the law, and not only by representatives, by remote control—this would not be of any help because the representatives soon will develop an interest of their own, the problem of the so-called politicians, but if you have a society in which everyone is a member, directly a member of the legislative body, then you have your say. Now what happens in a legislative assembly? You may have the most foolish wish. You can—it is no longer possible for you to think of your wish unqualified because you have to give it the form of a *law*. Take the simple case. You do not want to pay taxes, period. And you say, you go there—ya, but, you go there: abolition of taxes. But that is not what you say. You say, "There ought to be a law that there will be no taxes." So you cannot make your wish, your particular will, as Rousseau says,

[iii] French philosopher Denis Diderot (1713-1784), who, with Jean le Rond d'Alembert edited and wrote articles for *Encyclopédie, ou dictionnaire raisonné des sciences, des arts, et des métiers* [Encyclopedia, or a Systematic Dictionary of the Sciences, Arts, and Crafts] (1751-72).

your possibly foolish will, the standard. You have to transform it by generalizing it: *no one* should pay taxes. Quite a few people then come to their senses and say, "Well, it was not such a good conceit after all." The generalization of the wills guarantees their rationality. That is the first assertion of Rousseau.

Now this requires however this whole arrangement, the total surrender of the individual with all his rights and all his powers to society. This is a well-known thesis of Rousseau, and Rousseau is frequently called a totalitarian on this account. In a sense it is totalitarian, but not in the sense in which the word is used today. It is a totalitarianism of society, not a totalitarianism of government; and when we speak of totalitarianism today we mean of course the totalitarianism of government, and this is simply incompatible with Rousseau's principles. As soon as the legislative, as soon as the assembly of the people ceases to be the sovereign and the government rules alone—as soon as this takes place, there is no longer any legality, any legitimacy, and no justice in any sense. Why does Rousseau demand the surrender of all one's power to the sovereign, i.e., to society? Part of the alternative would be that men would become, citizens would become, *dependent* on other citizens. What has later been called the danger of private government arises if there is not an ultimate sovereignty which can put down by legal action any such private government. Total surrender means also that there is no possible appeal from the verdict of the general will, i.e., from the law to natural law. And when Rousseau enumerates the kinds of law in a special chapter of *The Social Contract*, he does not even mention the natural law, in distinction to all other writers of the earlier times which I have seen. The principle of society which is constructed according to natural right makes superfluous an appeal from society to natural right, an appeal which is necessarily ineffectual. The best guarantee for natural right you can have is that the society is so constructed that it automatically takes care of the natural right of each. And Rousseau believes that even if everyone becomes a member of the legislative body, i.e., of the sovereign, then nothing can happen to him. I must read to you a few passages of Rousseau. In the first place a formula of the social contract. The problem: "To find a form of association which defends and protects with the whole common force the persons and the goods of every associate, and by which everyone, uniting himself to all, obeys nevertheless only to himself and remains as free as he was heretofore."[iv]

The properly constructed society combines the advantage of the state of nature, i.e., perfect independence, perfect freedom, with the advantages of society. That is the point. Now what is the solution to this problem? "Everyone puts in the common his whole person and his whole power under the supreme direction of the general will, and we receive again each member as an indivisible part of the whole."[v]

As it were, everyone sacrifices himself to the whole for one moment, and then he is given back to himself but now *protected* by the whole of which he has become a member. Two more passages: "One admits that the whole which everyone alienates of his power, of his goods, of his freedom, is only the *part* of that the use of which is necessary or useful to the community." And now there comes a key sentence: "But one must also admit that the sovereign alone is judge of this importance."[vi]

[iv] *On the Social Contract*, 1.6. Strauss's translation.
[v] *On the Social Contract*, 1.7. Strauss's translation.
[vi] *Social Contract*, 2.4. Strauss's translation.

You establish society—in particular, think of Locke—in order to protect your property. And surely the sovereign would act against his duty if he would take away your property, but he may need some part of this property, say, via taxes—that is all right. But this can be done only by proper law. But the sovereign alone is the judge. What he may need in certain cases, in unforeseeable cases, no one can predict. There is no limit given to the power of the sovereign, in this or in any other respect, that is the practical consequence. But Rousseau believes that this is sufficient—not only sufficient, but the only possible guarantee of the rights of man.

"The social contract has for its object the preservation of the contracts. He who wishes the end wishes also the means, and these means are inseparable from certain risks, even from certain losses. He who wishes to preserve his life at the expense of others must give his life also for them if need be. The citizen is no longer the judge of the danger to which the law wills that he exposes himself."[vii]

You see the famous Hobbean question: I did not enter society in order to expose my life, and therefore I run away in a battle. I cease to be the judge, the judge is the law. "And when the prince tells him (the government), it is expedient for the state that you die, he must die because it was only under this condition that he has lived hitherto in security and that his life is not only, merely a benefit of nature but a conditional gift of the state."[viii] Only under this condition is it possible to have ordinary security for life—if you are willing to risk your life if it is necessary, and the judge of that necessity is primarily the sovereign, the people assembled. Secondarily, however, in such cases as peace and war, which cannot be determined by law, it is the judgment of the government. I will speak of this distinction almost immediately.

The sovereign is distinguished from the government. The sovereign people must give power to enforce laws to a man or body of men. This is the government. The distinction between sovereign and government is absolutely crucial in Rousseau, and it must be a distinction because the sovereign is the people at large, and it is almost impossible to have, say, the five hundred men or five thousand men of a town meeting to be also all magistrates. I mean, you can figure out some will be dogcatchers, some will be higher men, and so on, and so on. Perhaps this is true, but this is not magistracy strictly speaking. You have to have a limited government personnel, especially on the highest level.

Now this distinction between the sovereign and the government is radically different from what we have in Hobbes, not only, but also in Plato and Aristotle, and generally speaking. The clearest exception in former times is the doctrine of Marsilius of Padua, of which we have spoken before. Marsilius makes a distinction between the human legislator and the ruling part of the commonwealth. That is in a way the same as Rousseau's distinction between the sovereign and the government. And the human legislator according to Marsilius is "the totality of the citizens or its stronger [or more weighty—LS] part."[ix] That is the legal word. In Rousseau of course it is the whole citizen body, but in Marsilius only the more weighty part may be the human legislator. Needless to say that the more weighty part rules in any society, in every society, so it is only an

[vii] *Social Contract*, 2.5. Strauss's translation.
[viii] *Social Contract*, 2. 5. Strauss's translation.
[ix] *Defensor Pacis* [Defender of Peace], 1.12.3.

apparent Rousseauism before Rousseau. But apart from this, in Marsilius the whole doctrine is an ad hoc statement for his anticlerical purposes and can be disregarded. We can say the distinction between government and sovereignty as we know it has been established by Rousseau.

Now you remember the whole construction depends on the fact that the general will is infallible, because if the general will would dictate foolish things, we would be back more or less in the situation that we are under Hobbes, [9]under Nero. Forgive me the double "under." You remember the case that Nero, who was supposed to guarantee our self-preservation, endangered it by going around with a tommy gun. Now this could also happen in a different way in a popular regime if the will of the majority is not necessarily rational and just, obviously. Rousseau knows this very well, and he saw that the general will can exist only under very specific conditions. Remember the principle: when you make a proposal, you say there ought to be a law to that effect. And this is fundamentally fair, because everyone else is more or less in the same position as you. But let us assume there are a few very rich people and the rest are very poor, so you can easily get a vote of the poor, a law to milk the rich. Because this makes—you know, he says, "I want to milk the rich." That is merely private will, and bad and of no concern. But then he formulates it into law, a law that property or income beyond this amount will be confiscated to the benefit of the poor. In a disguised way this is exactly what his selfish will was about in the beginning, so this does not work.

The rationality and the fairness of the general will is not possible if the society is not homogeneous. There must not be too great disparity of wealth nor any other heterogeneity, religious, racial, or whatnot, and this is what Rousseau meant. Rousseau did not believe it was possible to establish just society everywhere, only under conditions which are rarely fulfilled, because there must always be the possibility of having fairly *small* states, city-states. And the consequence of course is that in the states in which you—in the larger states in which you cannot possibly have this kind of town meeting, there cannot be *laws* properly speaking. I mean, they call that laws, naturally, what the French king council decrees and so on, what the parliaments decide, but this is only illegitimately called law, not a law strictly speaking. Therefore, Rousseau says, [in] most countries there are no laws, meaning no legitimate laws. The key point here is that a formal criterion, a formal criterion of law, is thought to make superfluous the substantive criteria. The substantive criteria are: a law is just if it complies with the principles of justice, commutative, distributive, or whatever you think of. But Rousseau believes that the formal criterion of the law is sufficient to guarantee the justice. What are the formal criteria? That it is a decision of the citizen body; that it is general in its origin; and that it is general in its content, i.e., no proper names must occur in the law. For example, it is perfectly possible that a certain individual is hated by almost everybody else and then there could be a law, "Let us kill that fellow." That is impossible. There would have to be a law specifying under what conditions a man can be capitally punished, and of course no *ex post facto* law, and this is a guarantee. And the execution of the law cannot lie in the hands of popular assembly; that must lie in the hands of the government, regardless of executive or judicial.

This is a very rough sketch of Rousseau's doctrine, which is limited for the very obvious reason that we are speaking here about the natural right problem. I would like to add another point. The democracy which Rousseau had in mind is a considerably qualified democracy, meaning this:

everywhere man must have thought, every man subject to the law must have the voice [to] speak his own [mind]. But some are more and some are less equal, meaning you can give by all kinds of devices—say, [by] gerrymandering you can bring it about that the more desirable people, say, the rural population, have a greater say than the rabble of the big cities, as someone called it. Because that was of course what Rousseau had in mind. To have the small property-owners, the countryside—they should be, they are the real pillar of a society, of a democracy, and they should of course have the first say. Now how this is to be done Rousseau did not develop in detail, but he did the second-best: he gave a description of the most respectable nation in his own view which ever was, namely, the Romans, how the Romans handled their elections, in the fourth book of *The Social Contract*. And there you see that you have this wonderful institution, that the poorest, the proletariat, belonged to one class out of hundred-fifty classes, and then of course they had a vote, they couldn't complain. The votes were in the hands of the rationally industrious, just as Locke would have decided it. So in other words, Rousseau was by no means alien to certain concessions to political necessity, as is clear from this. It comes very close to a kind of fraud to say that in such cases people have their vote, have their say, if the vote is absolutely zero. But this only I must mention in order to prevent a complete misunderstanding of how Rousseau proceeds.

But the decisive point from a theoretical point of view is this. It is not sufficient, as Rousseau knew quite well, [to rely on] the general will as previously described. In other words, everyone enters the society, generalizes his will, and then all arrive in perfect harmony at *the* just law on the subject. That would be too simple and too beautiful to be true, because it is obvious that you can have a majority and perhaps even unanimity for a rather stupid law, as Rousseau surely knew. But there is a more subtle difficulty. Here I enter the assembly according to the previous scheme as a simple egoist, concerned only with my well-being, and then I come into that machine of the general will, i.e., I formulate my selfish will in terms of generality, in terms of law, and out of it comes an unselfish proposal. Rousseau knew that this would not be sufficient. If we want to have a society, we need a *radical* transformation of natural man, i.e., of the selfish man, into the citizen, the citizen being a man who prefers the common good to his own good and the natural man is a man who prefers his own good to the common good or is interested in the common good only on the basis of calculation because it is conducive to his well-being. Now this transformation is not effected by the mere generalization of wills. How can it be effected? Rousseau has answered this question in a very cryptic chapter of the *Social Contract*, "On the Legislator," 2.7, and in other words, the Legislator is the solution to two problems, assuming this is a purely theoretical solution, but this does not mean that it is not very enlightening. There must be a Legislator, a man of superior wisdom, who elaborates a code, laws, one block vote. The Legislator has no legislative power whatever. He is a kind of commissioner who prepares a code, and the assembly alone, the sovereign alone, can make it law. But here you see how the rationality comes in which[10] is not guaranteed by the mere mechanism of the general will.

The second point, in a way the more important point, however, is that the Legislator brings about the transformation of natural man into the citizen by claiming *divine* origin for his code, and therefore with a view to the supernatural sanctions. This alone affects this fully. Man must be denatured, as Rousseau calls it, in order to become a citizen. Denatured: he must acquire a wholly artificial character if he is to be a citizen. From a complete being concerned with his own well-being alone, he must become a fraction, meaning a mere member of society. And this is

effected by the Legislator. [11]Rousseau knew of course that such legislators are not likely to arise in the eighteenth century, and therefore it is only a statement of the problem. But he needs an equivalent for the Legislator, and this is in the first place the civil religion, which he describes shortly before the end of the *Social Contract*.[x] The civil religion, a certain faith which is to be demanded from every citizen, is the only way in which dedication to the common good and the subordination of one's own selfish interest can be effected. Rousseau also thought of other things, by the way, which in the meantime have become extremely popular, namely, customs, manners, which have grown up in the time[12] of many ages. What is now called, if I am sufficiently well-informed, the socialization of man—yes, the socialization—by virtue of which the wholly unsocial baby according to that doctrine becomes a member, becomes socialized so that he can no longer think of himself anymore in terms of a mere individual with an interest of his own radically distinguished from the interest of society.

Now I come back to one point, the denaturalization, denaturation of man. Civil society is conventional, radically conventional, unnatural, if in a way required by man's nature. Rousseau has stated his view as clearly as he could at the beginning of *The Social Contract*: "Man was born free and everywhere he is in chains. How did this change from freedom to the chains take place, I do not know. What can make this change legitimate, I believe I can resolve this question."[xi] The purpose of Rousseau's political classic, *The Social Contract*, is to answer the question of how can there be legitimate chains. Every citizen, even of the best civil society, is in chains. The only question is: legitimate chains, free society or republic, as Rousseau says; or illegitimate chains, which of course have no claim to respect at all, despotism. Civil society is unnatural. Man is by nature good. We come to this point, i.e., society, civil man, cannot be good. The character, the praiseworthy quality of civil man, is not goodness but virtue. The antithesis of goodness and virtue corresponds strictly to that of nature and convention.

Now what does this mean? And how from . . . can this make some sense? And here there is another point where we see how much Rousseau was indebted to Hobbes and Locke and how much, to what extent, he saw problems where Hobbes and Locke did not see problems. You recall the starting point of Hobbes: self-preservation. Now this is simply taken up as a matter of course with everyone who had spoken of self-preservation, but Rousseau sees a difficulty. Self-preservation is based on a previous premise which we have to consider. Self-preservation is not good if that which it preserves is not good in the first place. Now that which self-preservation tries to preserve is life. Life must be good. Existence must be good. Life must have an intrinsic sweetness, as Aristotle says, if self-preservation is to be a sensible thing. Now this then is the basic premise: that existence is good. How do we know? Rousseau says, Well, I know, because we can experience this, we can have a *sentiment* of existence. This sentiment of existence is the ultimate justification of everything else, a thought which is wholly alien to Hobbes.

Now what Rousseau means by the sentiment of existence has a certain kinship to what the classics understood by contemplation, that which transcends the *polis* and is the ultimate justification of the *polis*. But Rousseau does not speak of contemplation strictly speaking but of the sentiment of existence, and here we see perhaps the root very simply. Contemplation as the classics meant it implied that the highest, the most fundamental at the same time is truth, the

[x] *Social Contract* 4.8.
[xi] *Social Contract* 1.1.

theoretical truth—and this is essentially a common good by nature. Whether it is in fact common is a secondary question, but all men can be truly and solidly united, that is the implication, only in the understanding of the truth and nothing else. In every other union, however close and intimate, there is always a question whether these people, the nearest friends, understand each other. That their wills might agree in the expression of their sentiments does not mean that they understand each other truly. To take the simplest case, if two people, or more than two, study a proposition in Euclid, they each mean exactly the same thing, and the same is true of higher subjects of theoretical understanding.

Now [13]from here we can understand the ultimate difficulty of Rousseau's doctrine. [LS writes on the blackboard] Sentiment of existence leads of course—the experience of the sweetness of existence leads of course to concern with self-preservation. But by engaging in concern with self-preservation, by becoming an active man, and in particular becoming a *citizen*, a member of the civil society, I become unable to have any more this "fundamental," "mystical" experience of existence. So the root of all human efforts [14]is in a way in a contradiction to these efforts. This fundamental contradiction is underlying the fact that civil society, however perfect, *excludes* the highest. I mean, the conflict between natural man and the citizen is ultimately insoluble for this reason. By the way, there is a way which leads from Rousseau's sentiment of existence to present-day existentialism. It is the same; in a way, this is the same thing: the sentiment of existence. Not only to say the experience of existence, which is not quite uninteresting, but the main point is what is experienced here is the unqualified sweetness of existence, whereas in existentialism as well as already in nineteenth-century pessimism, it is the terror or the anguish of existence which is the true experience of existence.

Now in his *Discourse on the Origin of Inequality* Rousseau had spoken of, had shown the development of the natural man in the strictest sense: the stupid animal to civil man via the savages. It took a very long time until man became able to enter civil society, i.e., for long stretches man would have been, was incapable of understanding the natural law. The natural law was not properly promulgated to man until [15]relatively recent times. This is a decisive step which Rousseau takes. Rousseau gives here in the *Second Discourse* an account of man in historical terms, a history of man. This history is radically different from the biblical history, and this is the most obvious difference. Furthermore, Rousseau teaches here [that] the specific difference of man is not reason, not reason—he challenges the traditional definition of man—but not even will, but perfectibility, as he puts it. Man has no nature to speak of: the peculiar human characteristics are all acquired, and not acquired in a teleological process but by virtue of accidents, as Rousseau calls it. This is of course very close to what present-day science teaches. For Rousseau, the more important point was this. If there is—and I think that is still very important for the present-day social science teaching—if there is no human nature to speak of, man is infinitely malleable, infinitely malleable; and whereas in former times proposals of reform could be turned down with reference to man's *nature*, which was not permitted, it now became possible to say, "Well, what do you mean by human nature?" That is, man as we know him, as he has developed, as he has been molded hitherto—there are possibilities of which we cannot even dream to which he can [and] will be able eventually to aspire. Now with this doctrine that there is no human nature to speak of—this is a considerable exaggeration which I make now—Rousseau prepares obviously the destruction of natural law in later times.

I leave it at these remarks about Rousseau and turn then to Kant. I hope we have some time for discussion a bit later. I will try my best, but it is no use to rush. Now Kant has stated very explicitly his debt to Rousseau. What he had learned from Rousseau, according to this explicit statement, can be stated as follows. In the first place, the superiority of morality to theoretical life, to contemplation, which Rousseau had asserted in an earlier writing I could not discuss here. Secondly, morality is above all recognition of the rights of man. But, here comes the difference: What is the basis of morality? In Rousseau, ultimately always self-preservation. Yet Rousseau was compelled to admit the need for denaturing man, i.e., that men must forget about their self-preservation to become citizens, and therefore Kant truly could not leave it at the Rousseauean doctrine. The most common view regarding the basis of morality was that that basis is ultimately happiness, and here Kant simply says that is no basis at all, because of the radical subjectivity of happiness. Everyone understands something else by happiness. The most respectable view in Kant's eyes is that according to which the basis of morality is the *perfection* of man's nature. That is the view of the classic tradition. But, Kant argues, this view presupposes that man is by nature inclined toward his perfection, and more radically that man's nature is good, of course not in the Rousseauan sense but in the Aristotelian sense. Yet we have learned from modern science [that] all desires and passions are natural. Everything that is and happens is natural. The view that nature is good is an assumption, a dogmatic assumption. We must first know what is good, and then we can see whether nature is good. Morality cannot be based on nature, and in particular not on human nature. Can it be derived from knowledge of God, from natural theology, and what was then called rational psychology, meaning a doctrine of the soul as substance which is immortal? Kant denies the possibility of theoretical metaphysics altogether—it is a very long argument—as did Hume before him and he knows [Hume's teaching]. The only rational theoretical pursuits are mathematics and natural science. Conclusion: there is no theoretical basis for morality; there is no possibility of deriving the ought from any is.

How then can we find the ought? We must first grasp the whole magnitude of the difficulty. We have mathematics and natural science. Now what does natural science teach us, in a general way, what is morally relevant? Answer: complete determinism, denial of moral freedom, of responsibility, and therewith of morality as such. So this is another reason why cannot build the ought from the is. But this determinism is based on the principle of causality: every event is determined fully by preceding events. There is no *beginning* of a new causal chain. Now Hume, the critic of natural theology, also criticized the principle of causality, and Hume's critique can be reduced to the sentence: Causality is not a rational principle. Causality is something we cannot help, [we cannot help] thinking causally—we are psychologically compelled to think causally—but it is not a rational principle. In other words, Hume had destroyed rationality in every form, and not only in the form "rational morality. "

Kant saw himself compelled to make an entirely new beginning, and the name he gave to it was critical philosophy. Critical philosophy is meant in contradistinction to dogmatic philosophy, the predominant philosophy, as well as to skeptic philosophy as exemplified by David Hume. You may remember in this context what I said in an earlier lecture[xii] about the peculiar character of modern thought right from the beginning: It was neither dogmatic simply nor skeptic simply; it was dogmatism based on skepticism. It was also already from the very beginning something in between dogmatism and skepticism. The same is true in a different way of Kant's philosophy:

[xii] See session 13.

neither dogmatic nor skeptical, but critical. To understand causality, to start from this, we need a radical revision of the traditional concept of reason. And this radical revision—and here I have to use terms the use of which I deplore more than you can think, but as a reminder if you have heard it elsewhere or will hear it elsewhere—this revision of the traditional concept of reason leads to famous synthetic judgments *a priori*. In more simple language—perhaps not more intelligible—what Kant claims to have discovered is to the spontaneity of pure reason, of *pure* reason, not of reason in the calculating sense. Spontaneity is a term used by Aristotle as that which characterizes brutes in contradistinction to man. Man has choice, has freedom. In an analogous way, Kant asserts that the spontaneity of reason, as it is effective in theoretical understanding, points to a higher form of reason, moral reason. Now what does this mean? The first step which Kant takes is to restore the possibility of science, the principle of causality, as deterministic science. The world as knowable is ruled by natural laws and nothing else; no place for freedom. Every action is fully determined.

But as moral beings we know that we are responsible for every action, or that the actions originate in *us* and are not originated by the environment, by our genes, or what have you. How can we then reconcile these two things, the impossibility of speaking theoretically of freedom and the necessity of admitting freedom? Answer: By a distinction. And this is the famous distinction between the *phenomenal* world, to which knowledge is limited, and the *noumenal* world or the thing-in-itself. In this form is the characteristic teaching of Kant. The only access which we have to the noumenal world, to the thing-in-itself, is through the moral consciousness. The only knowledge, if one may say so, of the thing-in-itself is moral knowledge, that is to say, a knowledge which enlightens us only about how we ought to act and not about any substances or beings. Indeed, we can find out later, on the basis of the moral consciousness, the necessity to believe in God and the immortality of the soul—these are postulates of practical reason, but they are not the basis of morality. In the traditional teaching the metaphysics of God and the immortality of the soul was the basis of morality, and Kant turns it around. The thing known is the moral law. What is hoped for or believed is the existence of God and the immortality of the soul.

Now what about this moral knowledge itself? This moral knowledge cannot have as its object a law imposed on us from the outside, by God or by nature. For such a law imposed on us cannot be obligatory if I do not know in advance that God or nature are good. But this doubt, this possible doubt of goodness is of course the work of our reason. No malignant power, as Descartes spoke of, can deceive us unless we possess reason. One cannot deceive a tree, one cannot deceive a dog; one can deceive only men with reason. Reason is intrinsically and necessarily sound, reason in contradistinction to the natural inclinations. So moral knowledge is knowledge of the law of reason. The law of reason is now understood in contradistinction to the law of nature. Laws of nature are not laws of reason. A law on how we ought to act which does not derive its content from God or nature, from anything but reason itself, a law the rationality of which is guaranteed by the *form* of that law—now what does this mean?

Here one sees how much Kant is indebted to Rousseau in the decisive point. Rousseau had taught that the infallible general will is a generalized particular will, and the generalized particular will is the law, the positive law of this particular society. Kant radicalizes this: the infallible moral law becomes known through the universalization corresponding to the

generalization of our maxims with a view to their fitness of being the possible principles of universal legislation. Now what does it mean, a maxim? Very simple. A maxim is the major premise of a practical syllogism. We always use such maxims whether we know it or not, but we can easily find out. We find sometimes people also know their maxims, when they are somewhat reflective. For example, a man may act on the maxim, "I want to have the maximum of fun, by hook and by crook, and the minimum of worry." And there are other maxims. So we all act on maxims, known—conscious or unconscious. In order to find out whether we act rightly, morally, we have to see whether our maxim stands the test of universalization, i.e., I transform it. I say, "I want to get rich by hook and by crook." I give it the form of a universal law: All men ought to try to get rich by hook and by crook. You see formally the same operation which Rousseau made regarding the generalization of the will, but only of course now not a law of this society, but *all* men, all men should try to get rich by hook and by crook. And then I see whether this is a possible principle of universal legislation. Is a society, a universal society of all rational beings, possible on the basis of such a maxim? And Kant contends this test is sufficient. The formal test of fitness for universalization of maxims is a sufficient test of the morality of the maxims. Kant discussed this at certain length, at some length—not at sufficient length. And therefore that is a long crux for interpreters, and a tremendous literature naturally, into which I cannot possible go because I must limit myself to a mere report.

The other implication, and this is perhaps more popular, [is that] morality is—[16][and this] follows from what I said—essentially autonomy, self-legislation. I must not bow to a law which is not fully evident to me. Many earlier philosophers would have said that, but Kant says something more: I must have imposed that law on me. I must have *originated* it; only to that extent can I be said to be moral. The earlier philosophers had meant that one must not bow to a law which is not evident to me—I mean, a non-political law. They meant of course something which is discovered by the study of nature, of human nature in particular. But [17]the law in Kant's sense does not pre-exist anywhere in nature as an end or so on, it originates entirely in the individual. Another way of putting it is, as Kant puts it: will, rational desire, is identical with practical reason, whereas traditionally of course practical reason is one thing, and will is an entirely different thing. I would like to finish this before I go on.

Now another point which is perhaps helpful for a very general understanding of what Kant is driving at concerns Kant's distinction between morality and law. Such distinctions were, had been a concern of political or legal philosophers for quite some time, but this reaches somehow its climax. Law is the sphere of coercion, of legitimate compulsion. Law has to do with all men regardless of whether they are moral or not. Law does not make a distinction between angels and devils, so to speak, it is concerned only with external actions. But every man pursues purposes of one kind or another. He cannot help doing that. The question is: Under what conditions am I necessarily free to pursue any purpose that I might have? The purpose of an angel or the purpose of a devil—it does not make any difference. This is the question which determines the difference between legitimate law and illegitimate law. Answer: If the law guarantees that freedom to me to pursue any purpose I might have, but as law it guarantees that freedom to me *only* by guaranteeing it equally to all. Hence the general principle of law is: An action is lawful if its maxim is compatible with the coexistence of everyone else's arbitrary freedom, of everyone's arbitrary freedom with the arbitrary freedom of everyone else under a general law. This is also derivative from Locke. Since I have read it very poorly, I will repeat it. "An action is lawful if its

maxim is compatible with the coexistence of everyone's arbitrary freedom with the arbitrary freedom of everyone else under a general law."[xiii] Arbitrary freedoms which are not compatible with other men's arbitrary freedoms are for this reason alone illegal. A simple example: My arbitrary freedom to kill is obviously not compatible with anyone else's freedom, because the other fellow is prevented from killing you by my killing him. But my freedom to ambulate the Midway is perfectly compatible with the freedom of everyone else to ambulate there. Ya? But in addition, it must also be compatible *under law* because, for example, say, some freedoms are not compatible so easily if some regulation is not made—say, men [18]whose second names begin from letter A to L may ambulate on Midway before noon and the others after noon. So that is obviously a perfectly legitimate law, according to Kant; I believe also according to common sense.

There is only one innate right, as Kant calls it, only one, and that is the right of *freedom*. Kant's importance for the doctrine of liberal democracy in the nineteenth and twentieth century is very, very great. Very great. You will see it from this point. The right of freedom, not the right of self-preservation. You remember, we get into troubles with self-preservation when we think of the cases of capital punishment, and military service, and other cases we have considered. So self-preservation is now dropped. The starting point of Kant in his moral philosophy is what he calls traditionally the good will. The good will replaces self-preservation as a ground of morality; and regarding the possibility of the good will, all men are equal. Furthermore, the good will, in contradistinction to the desire for self-preservation, depends entirely on me. Self-preservation as understood by Hobbes, Locke, and Rousseau is of course a natural inclination which is imposed on me by nature, whereas the good will necessarily originates in me. The good will is in no way a gift. The ground of man's equality is therefore man's peculiar dignity, his freedom, not an inclination which he shares with the brutes, like self-preservation. Kant divorces the right of man doctrine from its utilitarian basis and thus makes the rights of man sacred. This sacredness is enhanced, not lessened, by the distinction between morality and law as follows. Since man has a duty to be moral, he has the right, he has the right to be moral of course. Otherwise it would not be a right. [He has] also the right, within limits, to be immoral. And the original right of freedom, the *only* original right, includes the right to lie. Lying, that is the premise: lying is unqualifiedly immoral according to Kant. He does not make any concessions to common sense in this respect. So lying is unqualifiedly immoral, and yet man has a natural right to lie. That is very striking. I mean, it is easy in retrospect to understand that. If man has no right to lie, then he can be coerced to say the truth. In other words, severe censorship, severe censoring. And there are quite a few good arguments against censorship. The well-known stupidity of censors is the most practical argument. So in other words, on practical grounds one can say it is wise not to have censorship. You could give everyone the right to lie within limits—you know, no deception in business and so forth. But the striking thing is that in Kant, one of the severest moralists who ever lived, who teaches a natural right, an inherent right to lie in spite of its immorality.

Perhaps the following remark may be of some help in clarifying the distinction between morality and legality. The establishment of the just order of society, Kant says, does not require a nation of angels, that is, you know, perfect men. It can be established among a nation of *devils*, provided the devils have ordinary common sense. Naturally, if a radical conversion of man to true goodness is not required, the establishment of the just order is much easier, and that has to

[xiii] *Metaphysics of Morals*, first sentence of section C.

do with that realism I spoke of before. And we have then this interesting situation, that there is a moral obligation to the just social order: roughly republicanism and universal confederacy of republics. That is roughly the notion. There is a moral obligation to that, but this moral obligation will of course be effective only regarding relatively the few men who listen to moral demands. What about the others? The others, the devils, will be driven by their devilish calculation to the same result to which the angels are driven by their angelity; and therefore [19]the reasoning of devils and the reasoning of angels agrees regarding the whole legal order, both intrastate and international. And this is, therefore—Kant became a precursor of Marx. Marx is slightly different, but the fundamental notion that everything in man—it is according to the highest moral demands, and yet you do not have to *count* on the moral demands to get it because sheer self-interest—of individuals, of nations, or of classes, it does not make any difference—leads, converges to the same end. This is an important practical result of Kant.

So in Kant we have surely . . . in Kant there is no longer any natural right or natural law strictly speaking, but he occasionally uses the term natural right in his teaching of what he calls the innate right. There are laws of reason, laws of freedom, but no longer laws of nature. Human nature cannot be the basis of man's moral orientation. And this has of the course the implication I mentioned before in connection with Rousseau. Since the moral teaching is not based upon human nature, the new doctrine opens a vista of hitherto uncontemplated possibilities. No appeal to experience as speaking against a proposal can no longer be valid, because experience tells us only as men have been hitherto, but the possibilities beyond man as he was hitherto can only be found out by looking at the moral law and not by looking at how men ordinarily have lived and are still living.

Permit me, if you may, a few more remarks—I know that is very disgracefully short—on Burke, and then if you have some time, I will be willing to stay here for a while. Now Burke is a man of the utmost importance in the history of natural law. I can only say a few words about him. Until a relatively short time ago, Burke was viewed as something like the founder of the historical school of the nineteenth century, first in Germany and then in other parts of Europe. The simple formula: Not rights of men, but right of Englishmen. Rights of men are *abstractions*; right of Englishmen, that is concrete, based on the positive law of England and long development. In the meantime, a number of students, chiefly Catholic writers—Ross Hoffman[xiv] and others—have shown how much Burke's doctrine is based on the Thomistic premodern natural law doctrine, and they have made their case without any question. But, and I think one can say reasonably that the study of Burke must simply start from this as a *fact*, that Burke turned, re-turned as it were, from a modern natural law to Thomas Aquinas, to Cicero, and that this is the best. One must, however, in order not to exaggerate one must admit, state, a number of qualifications, which I briefly enumerate. In the first place, Burke was not a theoretical writer. All his writings are speeches and state papers for a special occasion. That is to say, Burke always chooses on the basis of principles to which one can appeal safely given the context in which one speaks, and so Burke uses here quite a few times principles characteristic of modern natural right, law, simply because they are convenient for the purpose. Nevertheless, one point stands out, especially in contrast to Rousseau. The right of self-preservation in Burke's view does not entail the right to judgment about the means, and surely not an *indefeasible* right of this kind. There is no natural

[xiv] Ross J. S. Hoffman, *Burke's Politics: Selected Writings and Speeches of Edmund Burke on Reform, Revolution, and War* (1949).

right to participate in legislation as Rousseau in particular had thought. Burke himself has written a single theoretical work, his *Inquiry into the Origin of Our Ideas of the Sublime and Beautiful*,[xv] apparently very far away from politics but not so terribly. An analysis shows that this is an outgrowth out of British sensualism and has nothing whatever to do with the Thomistic tradition, especially the key point, which Burke makes with unusual force: *sensual* beauty has nothing whatever to do with intellectual beauty, whereas the tradition always took for granted that sensual beauty is ultimately intelligible only in the light of intellectual beauty. In the same context, his usage of the term metaphysics or metaphysicians, which is almost always derogatory. In addition, Burke accepted Adam Smith's teaching without qualification. The so-called profit motive, or as Burke calls it, lucre, is [rational or legitimate], and surely this is not a Thomistic teaching.

But the main point is indeed that which somehow connects Burke in a complicated way with the so-called historical school. The time is too late to read to you passages; I will give you the following rough statement. In the modern economic school this view had developed: the common good is a product of activities which are not by themselves ordered towards the common good. I am concerned only with my profit, and this applies to others or other men in the market, and this will bring about the most beautiful harmony. If there were a man or body of men who would wish to *plan* that harmony, it would never come about. Now this kind of thinking characterizes Burke's thinking about political matters in the following way. The establishment of the good political order is the product of activities which are not ordered toward the good political order. The best way of getting the good political order—I exaggerate grossly—is absent-mindedness, a famous British formula.[xvi] [Laughter] You think of the problems at hand, you solve the problems confronting you, redress grievances to the extent to which it is absolutely necessary to redress them, and out of this in the course of many generations develops the most beautiful order. General principles, abstract principles will only be bad. Differently stated, the best constitution is not formed upon a regular plan with any unity of design, but directed towards the greatest variety of ends. It is exactly the opposite of Plato and Aristotle, and also of the modern natural right teachers: the greatest variety of ends, the greatest freedom for every end a man might entertain, without any emphasis here on a hierarchy of things.

Burke has used the term—not as frequently as one would think on the basis of the reference to that—the term "prescription." It would be a nice piece of work if someone would go over all writings of Burke and see how rarely it occurs. The index in my edition has only two occurrences; perhaps there are a few more. It's extremely rare.[xvii] But the interesting point is this, that prescription is a term stemming from private law, Roman law, and has to do with the action when your title to a property is contested—this limited context. Then you can say: Well, from time out of mind it was in possession in my family. That is valid in law, at least according to Roman law. Now Burke applies this in a way—certainly this would have to be established—to public law. The principle of legitimacy is prescription. Prescription. It was—this I think would

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[xv] Edmund Burke, *A Philosophical Inquiry into the Origin of Our Ideas of the Sublime and Beautiful* (1757).

[xvi] History J. R. Seeley observed in *The Expansion of England* (1883) that "We seem to have conquered and peopled half the world in a fit of absence of mind."

[xvii] The index to the Bohn Standard edition has a reference to vol. 2.422 and vol. 6.80, but there are more than a dozen references to prescription in the works themselves.

deserve a study, and I believe—and as far as I know no one has ever done this. But the main point is that Burke comes close to a view—he never fully approaches it—according to which there is no possibility of an appeal from the established order toward any anterior right. The historical right, the positive right—but positive right now understood in a special manner, not the positive right simply, what any tyrant or a foolish assembly might decide, but the right of a nation which has grown in long course of time—is the wisest that you can possibly have and much better as a guidance than any abstract right, any abstract law, any natural law even. And this was then, became then the thesis of the historical school: Everything good is inheritance, is inherited. This was not the view underlying the natural law tradition, because natural law is not strictly speaking inherited; it is coeval with man's reason and present in principle in each man at whatever time he lives. Secondary things—very important things, but secondary things—can be inherited; its principles are not inherited. And this means the substitution of history, of the—and you see how interesting that is. The distinction became popular on the basis of Burke between the grown and the fabricated, the grown and the made. The grown and the made; and the true law, the sound law, is grown in opposition to made.

The founder of the historical school in Germany, Savigny,[xviii] wrote an essay on the vocation of our generation, or of his generation, to make for legislation, for a code. And he denied that. The principle being fundamentally no *making* of laws. Something like the emergence of the old common law and the continuation of that would be much better. Grown: that reminds of the Greek word for nature, *physis*. History as it came to be understood on the basis of Locke[xix] is a natural process of a different character, a natural process of a higher order. The distinction between nature and history superseded the distinction between nature and convention. This is much more important, I believe, than the simplistic, naturalistic view according to which everything that is is natural, which has of course very much—it was very powerful in getting rid of the distinction between nature and convention, but the practically more important view is that the ancients at the beginnings spoke of convention in contradistinction to nature. One must speak of *history* in contradistinction to nature. But this is a long, long subject to which I can only appeal. I think it is a proper conclusion to a course on natural law, because no concept was as powerful for the destruction of the very thought of natural right and natural law as the concept of history—history no longer understood as a record of what has happened or research into what has happened, but history, as they call it, [as] a dimension of reality different from the dimension called nature. So this—I must finish here. [20]A brief discussion of about twenty minutes I think is feasible. Ya?

Student: . . . law?

LS: A law has you, ya, in its grips. You have rights. Does this make sense? A law, I mean, a law is a body of rules. A right is, as was said in former times, a *faculty* or, say, an ability, that which is possessed by individual human beings or by groups of human beings. I mean, you no doubt have heard the distinction between rights and duties. That is a very common distinction: right and duty. Now a law primarily pronounces duties; indirectly also rights perhaps, indirectly, but primarily duties. Think of the Ten Commandments. You have duties, not rights, but they imply

[xviii] Friedrich Karl von Savigny, *Of the Vocation of Our Age for Legislation and Jurisprudence* (London: Littlewood and Co., 1831).
[xix] Strauss says Locke but presumably means Burke.

rights, you can say. [21]In prohibiting theft, for example, that commandment in a way gives the right to property, but only indirectly. It is not the primary thing. So,[22]Mr. Morrison?

Mr. Morrison: Is there a distinction between natural rights and natural *rights*?

LS: Ya, surely. I am very sorry about this inconvenience, but in our age of linguistic studies everyone should be familiar with the fact that a term may have different meanings; not so many, only two here, two meanings. And especially since it is so easy to make the distinction clear by using the singular in the first case and the plural in the second case. So when Aristotle speaks in the passage in the *Ethics* which we have read of *physei dikaion*, it can only by translated "natural right" in the singular. And surely what people like Hobbes, Locke, and Rousseau have in mind are rights. Therefore, very rarely do people speak of *the* right of man, of men. They say, speak of the rights of man, or even . . . like, *les droits de la humanité*. Ya? Also plural, the rights of mankind.

Student: What is the . . .

LS: Not simply. There is one thing in common, and that is surely the word "natural." Both are meant to be wholly independent of human establishment. When you have such, say, simple rules of commutative justice—the correspondence between price, the just price, and the work done by the craftsman, that is one example of what Aristotle understands primarily by natural right. But the modern thinkers think primarily of such things as the right of self-preservation with its corollaries. I mean, if you think of these two examples—commutative justice in Aristotle or its equivalent in Plato, and self-preservation and its implications in Hobbes, Locke, Rousseau—then you see it immediately: the right of self-preservation which includes other rights. And it takes—by the way, that is very simple, the Aristotelian notion of commutative justice leading to the concept of the just price; on the other hand, the right of self-preservation destroying the notion of the just price. The only price of which you can speak is the market price, the price as a result of the market, which is not strictly speaking just, but it is the only possible price. Do you see the realism? If you speak of a just price—and there must some men who preach people that, craftsmen, merchants . . . the just price, because this is not a self-enforcing law. But the market price is self-enforcing. That is much more practical. And forget about the just price. And then the argument might then be made that the market price is, in addition, apart from the fact that it is inevitable, it is also the justest price that could come out of that. This example would illustrate it very simply, I believe, what the difference is. Yes?

Student: In Rousseau man is by nature benevolent and concerned with his self-preservation, and yet in a state of civil society he has to in some sense be denaturalized in order to be—to live in society by the use of civil religion or the lawgiver. In what sense is his nature altered?

LS: Is it nature? In what sense is it nature?

Same Student: In what sense is his nature altered? What actually does the civil religion do to the natural man to make him—

LS: It makes man as Rousseau put it a fraction, a member, a mere member—the word is characteristic—a mere member of society whereas he is by nature a complete being. He is supposed to *feel* in his bones a public disaster as he does feel in his bones when he is the object of a [private misfortune]. That is, Rousseau comes very close to the later view, the view of the historical school but he is still completely separated from it by his emphatic assertion that civil society and everything connected with it is radically conventional. Yes . . .

Student: What reason would Rousseau give for anyone entering into even his society, assuming his is the best? Given the way he describes the state of nature, why would anyone leave it?

LS: Because[23] from a certain moment on if you follow it quite literally, it becomes absolutely insecure. It would offer no protection whatever. Man gradually—that is a long discussion, he describes it in the *Second Discourse*—men gradually acquire some kind of property here in the state of nature. They road forests and what have you, and then they begin—the land becomes scarce, food becomes scarce, and all kinds of fights between the haves and the have-nots, and the only way out is the establishment of government. In other words, it is practically impossible. Try it! [Laughter] It is impossible.

Student: So the state of nature somehow turns into something else, a state of war.

LS: Ya. Ya, he says so. It becomes a most terrible and cruel state of war—he says so explicitly—and therefore one must leave it. You know, this reasoning here is—in other words, that reasoning is not different from that of Hobbes. The key difference is here: not [to] surrender all one's power possibly to one man or preferably to one, but *only* to the whole of society of which you remain an equal member. That Rousseau thought was the best thing possible. The best thing possible. Mr. Boyan?

Mr. Boyan: . . . natural and conventional . . .

LS: Ya, I think that is a fact. The reason for that I can only indicate. The traditional view was based on the assumption that that there is something called the soul. The soul. And the soul in the strict sense disappears from Descartes on. The soul is in Aristotle the principle of motion as well as of perception. Everything belonging to motion is now assigned to matter—ya, now assigned to matter. And then it remains—perception. Perception of course cannot be ascribed to matter. And this becomes then something which is called—the word which they use from Descartes on, Descartes, Locke, Burke, and Hume is ideas. Have you ever heard that word? Ideas, not in the Platonic sense or Augustinian sense; I mean now used in the sense in which you can buy an idea. You could not buy an idea. What is that idea? This means—that is very strange.[24] The study of Hobbes is very instructive, because Hobbes was so old-fashioned that he did not adopt that term, because he had the sense that this calls entirely heterogeneous things [the same thing]. A passion, a desire, a will, a sense perception, a thought: these are all passions. Now what do they have in common? They are *conscious* acts. What you get instead of the soul is a splitting. The soul is split into bodily things, purely bodily, mechanical things on the one hand, and the consciousness on the other. Inclinations as they are traditionally meant would belong to the soul. In other words, there is only *surface* phenomena, if I may say so. The depth which the soul had is no longer there. Differently stated and somewhat closer to present-day terms, there is no

unconscious. When you speak of soul, you imply the unconscious. When you speak of the consciousness, you deny that there is something unconscious. The unconscious is then no longer of a soul-character. If I may transform the English language along the lines of the Greek: it is not "soul-ic," not soul-like. This is, I think, the background of that. The modern psychology of the seventeenth-eighteenth century is characterized by the fact that the soul is replaced by the consciousness.

Now [25]toward the end of the nineteenth century, including in our age when all the whole tradition of the seventeenth-eighteenth century is breaking down, when classical physics is replaced by an entirely new physics, there is also a radical change in the sphere in psychology. And many thoughts which were impossible in the seventeenth-eighteenth century now come to the fore, not exactly in the form which they had after the seventeenth century—very far from it, but in a way, these are also repristinations. And I hear there is quite a literature about the connection between, say, Freud and psychoanalysis and earlier philosophic thought. In a very general way, that is true. So there is a—when Kant speaks of inclinations, this has no longer any meaning of something [that] gives man a direction. Inclination is simply the opposite of duty, period. It is possible that an inclination may happen to agree with a duty, i.e., a man may like to do what he is obliged to do. That is merely accidental. Inclinations as such are morally simply neutral, whereas in the traditional view, no, they give us a decisive directive.

By the way, the older view includes of course the natural sociality, because the natural sociality is not a mere matter of the consciousness. It is a matter of the soul, our whole being: our whole being is social. Therefore, the people like in a way Spinoza and Hume—that is very interesting—they come close, in a way, to the traditional doctrine that man is a social animal. But in which way? Association of ideas. Primarily we are selfish, seeking our pleasure and trying to avoid our pain. And now when I see another fellow having pleasure, my reaction may be complicated, because in the first place, it is not my pleasure and I might become envious. But on the other hand, by *reminding* me by a natural association of ideas of my pleasure, I feel some pleasure in seeing his pleasure. Does this make sense? And that is what Hume calls an association of ideas and Spinoza calls imitation of affects. But by virtue of this imitation of affects there is a kind of participating in the consciousness of others, and since this take place by a natural mechanism—association of ideas, a strict mechanism—we are *in a way* social animals. The thesis seems to be the same: man is a social animal by nature, but the meaning is radically different because here the sociality is a product of a mechanism. In Aristotle it is constitutive of our very being . . .

Student: In the beginning of the class, you gave your description of historicism . . . logic . . . language . . .

LS: Ya, but it was of course—I cannot in such a survey go into all—it was very prominently there in the case of Hobbes and also in Locke, but I had to mention it here because it became a part of the key natural right argument of Rousseau. Therefore I had to mention it today. But there is no difference up to roughly 1800 as to this: thinking is not language. A concept, if I may say so, is not a word. But we cannot possibly have concepts without words. But this does not mean there is—that we think in words only, because we always have the freedom to replace any word by another word, and we can translate and all this kind of thing. Language proper is conventional. And when the Greeks speak of *logos*, that means always speech and never

language. Language is *glossa*, which means tongue, as we still say "the English tongue." The language as language is variable, particular, conventional. Thought is natural. The great change of things, when it is asserted that there is a fundamental dependence of thought on language—so that the thought, say, of the European is radically different—even after he has made greatest efforts—from the thought of the Chinese or whatever it may be, because of the essential, one-to-one relation. But this is only a consequence of the historicization of the notion of thought. In other words, there is no possibility of transcending history, and then you find as an afterthought a very simple confirmation of that in the fact that, in the alleged fact that all thought is bound up with a specific language and that there cannot be a universal thought because there cannot be a universal language, except these artificial and not very successful languages like Esperanto and so on.

Student: Is there any objection to be made to this allegation?

LS: That is a long question, but I think the point is—what I would say is this. [26]The changes in understanding, say, of Greek philosophy when it became translated into Latin or Arabic, they are grossly exaggerated. In the decisive points, the people who had access to Aristotle, for example, only in Latin or Arabic understood Aristotle *better* as a rule than the modern people who have the wonderful dictionaries and commentaries of modern scholars and what have you. So that is I think an element of some practical importance, but we cannot open up this immense question.

So, may I? Will you be so good those of you who are here to wait for two more minutes? Oh, no, I may make this announcement now and then I give you some . . . There will be an examination Monday at 3:30. And I have noticed some signs of apprehension [laughter] on the part of some you. Now I would like to say, tell you, only one thing. I shall not examine anyone unfairly. I mean, in other words, I will never raise a question which was discussed in this course at a single meeting for ten minutes and which of course no one among you is likely to remember. That goes without saying. This at least I can assure you. So assuming a certain amount of intelligence and assiduity, you should have no difficulties, and I am prone to think of any artificial means of appeasement—how are they called? Drugs, I believe [laughter]—literally or metaphorically. That is not a serious point. It is much better to think about natural right than about the examination. [Laughter] You wanted to say something.

Student: . . .

LS: This is too. It must be genuinely general in its object. General in its origin: it must be the work of the citizen body assembled when no one is left out. And it must be general in its object, i.e., it must make statements about all—not necessarily all citizens; it may also make statements about all citizens capable to bear arms. All citizens who are craftsmen, shoemakers, but no proper names so to speak. No discrimination. Under this condition, the law is necessarily just, which does not mean necessarily wise. That is a difficulty. That is one difficulty. And even that is according to Rousseau possible only in a rather homogeneous society where they have no considerable cleavages. There must be no stable minorities. Does this make sense? A minority from time to time, but no stable minorities—then the whole thing does not work. Good.

[1] Deleted "in which"

[2] Deleted “and.”
[3] Deleted “Rousseau did not—that.”
[4] Deleted “is not”
[5] Deleted “now.”
[6] Deleted “and this was.”
[7] Deleted “to play”
[8] Deleted “there is already.”
[9] Deleted “ah.”
[10] Deleted “cannot”
[11] Deleted “while.”
[12] Deleted “of century”
[13] Deleted “here we have.”
[14] Deleted “is something.”
[15] Deleted “he.”
[16] Deleted “that.”
[17] Deleted “this is.”
[18] Deleted “whose first.”
[19] Deleted “this is.”
[20] Deleted “but it is not”
[21] Deleted “I mean.”
[22] Deleted “ah.”
[23] Deleted “it is—it would”
[24] Deleted “An idea”
[25] Deleted “in the.”
[26] Deleted “that.”